Other incidents of tenure.

prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Bar to recovery of rent pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Transfer of, and succession to, share in permanent tenure.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

General.

Continuance of existing occupancy-rights.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Definition of "settled raiyat".

20. (*1*) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(*2*) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(*3*) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(*4*) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(*5*) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(*6*) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(*7*) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Settled raiyats to have occupancy-rights.

21. (*1*) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(*2*) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Effect of acquisition of occupancy-right by landlord.

22. (*1*) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(*2*) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(*3*) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

Bengal Tenancy Act.

(*Chapter V.—Occupancy-raiyats.—Secs. 23-30.*)

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

Incidents of occupancy-right.

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(*a*) the contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

Enhancement of rent.

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

Provided as follows—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely):—

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

Enhancement of rent.

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

XIV of 1882.

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

Rules as to enhancement on ground of landlord's improvement.

33. (*1*) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(*2*) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase

yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement suits.

37. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

1882.

Reduction of rent.

Reduction of rent.

38. (*1*) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely) :—

(*a*) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(*2*) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists.

Price-lists of staple food-crops.

39. (*1*) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(*2*) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

Price-lists.

(*3*) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(*4*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(*5*) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(*6*) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(*7*) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

Commutation.

Commutation.

Commutation of rent payable in kind.

40. (*1*) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(*2*) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(*3*) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(*4*) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity ;

Commutation.

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(*5*) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(*6*) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Grounds on which non-occupancy raiyat may be ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(*2*) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(*3*) If a raiyat on whom an agreement has been served under sub-section (*2*) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(*4*) When an agreement has been executed and filed by a raiyat under sub-section (*3*), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the raiyat does not execute the agreement and file it under sub-section (*3*), he shall be deemed for the purposes of this section to have refused to execute it.

(*6*) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER VII.

UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely) :—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(*a*) on the expiration of the term of a written lease;

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

50. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Rules and presumptions as to amount of rent.

(*2*) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(*3*) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(*4*) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

52. (*1*) Every tenant shall— *Alteration of rent on alteration of area.*

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

Alteration of rent on alteration of area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

Payment of rent.

Payment of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

Time and place for payment of rent.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

Power

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear. *rent.*

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and accounts.

Receipt

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord. *account.*

Tenant making payment to his landlord entitled to a receipt.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

Tenant entitled to full discharge or statement of account at close of year.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. (*1*) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(*2*) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(*3*) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Local Government to prepare forms of receipt and account.

59. (*1*) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(*2*) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Application to deposit rent in Court.

61. (*1*) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it; *Deposit of rent.*

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs. XIV of 1882.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (*1*) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(*2*) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

Notification of receipt of deposit.

63. (*1*) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

Deposit of rent.

(*2*) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Payment or refund of deposit.

64. (*1*) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) The payment may, if the Local Government so direct, be made by postal money-order.

(*3*) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(*4*) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of rent.

Arrears of rent.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejectment for arrears in other cases.

66. (*1*) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant. *Arrears of rent.*

(*2*) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court reopens.

(*3*) The Court may for special reasons extend the period of fifteen days mentioned in this section.

Interest on arrears.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

63. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

(*2*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

Order for appraising or dividing produce. *Produce-rents.*

69. (*1*) Where rent is taken by appraisement or division of the produce,—

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

Procedure where officer appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time. *Produce-rents.*

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant. *Liability for rent on change of landlord or after transfer of tenure or holding.*

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability for rent after transfer of occupancy-holding.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Illegal Cesses, &c.

Abwáb, &c., illegal.

74. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void. *Illegal cesses, &c.*

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding

two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements.

Definition of "improvement."

76. (*1*) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(*2*) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is cultivable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(*3*) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (*1*) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(*2*) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

Right to make improvements in case of non-occupancy-holding.

79. (*1*) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(*2*) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlords' improvements.

80. (*1*) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(*2*) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(*3*) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Bengal Tenancy Act.

(*Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 81—86.*)

Application to record evidence as to improvement.

81. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(*2*) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

Compensation for raiyats' improvements.

82. (*1*) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(*2*) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(*3*) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(*4*) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(*5*) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (*1*) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement; *Improvements.*

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(*2*) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, *Acquisition of land for building and other purposes.*

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Sub-letting.

Restrictions on sub-letting.

85. (*1*) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent. *Sub-letting.*

(*2*) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(*3*) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Surrender and abandonment.

Surrender.

86. (*1*) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding. *Surrender and abandonment.*

Surrender and abandonment.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely :—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly ; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice ; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

Surrender and abandonment.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Sub-division of tenancy.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

Sub-division of tenancy.

Division of tenancy not binding on landlord without his consent.

Ejectment.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Ejectment.

No ejectment except in execution of decree.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Measurements.

Landlord's right to measure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely) :—

(*a*) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area ;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Power for Court to order tenant to attend and point out boundaries.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Managers.

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

Power to nominate person to act in all cases under clause (b) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management. IX (B.C.) of 1879.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

Managers.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 103.

(*8*) He shall be removable by the order of the District Judge, and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to make rules.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Power to order survey and preparation of record-of-rights.

101. (*1*) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following (namely) :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

(*a*) the name of each tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Procedure as to recording or settling rents.

104. (*1*) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(*2*) When it appears that a tenant is holding land in excess of, or less than, that for which he is

paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

Publication of record.

105. (*1*) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Procedure in case of dispute as to entries in record.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

Procedure to be adopted by Revenue-officer.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

1882.

Appeals from decisions of Revenue-officers.

108. (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

1882.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

1882.

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

Undisputed entries in record to be presumptive evidence.

109. (*1*) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Time at which settlement of rent is to take effect.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

Power to authorise a special settlement in special cases.

112. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor General in Council.

Period for which rents as settled are to remain unaltered.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Expenses of proceedings under chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-section (*2*), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Presumption as to fixity of rent not to apply where record has been prepared.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

CHAPTER XI.

Record of Proprietors' Private Lands.

Saving as to khámár land.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Behar as zirát, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

Rules for determination of proprietor's private land.

120. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's khámár, zirát, sír, nij, nij-jot or kamat.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(*3*) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

(*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Form of application.

122. (*1*) Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

Procedure on receipt of application.

123. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

Execution of order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

Service of demand and account.

125. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Right to reap, &c., produce.

126. (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(*2*) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products

distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(*3*) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Sale proclamation to be issued unless demand is satisfied.

127. (*1*) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

Place of sale.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

When produce may be sold standing.

129. (*1*) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(*2*) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

Manner of sale.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Certificate to be given to purchaser.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.

134. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(*2*) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Certain persons may not purchase.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Procedure where demand is paid before the sale.

136. (*1*) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(*2*) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(*3*) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(*4*) After the expiration of one month from the date of a deposit being made under this section,

the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

Conflict between rights of superior and inferior landlords.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Distraint of property which is under attachment.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Suit for compensation for wrongful distraint.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Power for Local Government to authorize distraint in certain cases.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter, to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

CHAPTER XIII.

JUDICIAL PROCEDURE.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules. XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits. XIV of 1882.

Jurisdiction in proceedings under Act.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought. XIV of 1882.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Bengal Tenancy Act.

(*Chapter XIII.—Judicial Procedure.—Secs. 145-151.*)

Náibs or gumáshtas to be recognized agents.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made. XIV of 1882.

Special register of suits.

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf. XIV of 1882.

Successive rent-suits.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit. XIV of 1882.

Procedure in rent-suits.

148. The following rules shall apply to suits for the recovery of rent :—

(*a*) sections 121 to 127 (both inclusive), 129, 365, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit : XIV of 1882.

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification : XIV of 1882.

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only :

(*d*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866; XIV of 1866.

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served :

(*e*) a written statement shall not be filed without the leave of the Court :

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not : XIV

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears :

(*h*) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him. XIV

Payment into Court of money admitted to be due to third person.

149. (*1*) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(*2*) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(*3*) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(*4*) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (*3*).

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Appeals in rent-suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against forfeitures.

155. (*1*) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of pro-

ceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (*1*) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely):—

(*a*) the situation, quantity and boundaries of the land;

(*b*) the name and description of the tenant thereof (if any);

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(*d*) the rent payable by him at the time of the application.

(*2*) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

XIV of 1882.

(*3*) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

General powers of purchaser as to avoidance of incumbrances.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests", but with power to annul the interests defined in this chapter as "incumbrances":

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter:—

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attach- XIV

ment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the parganá, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Order of attachment and proclamation of sale to be issued simultaneously.

163. (*1*) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(*2*) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(*3*) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(*4*) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (*1*) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (*1*) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances. XIV of 1882.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (*1*) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances under the foregoing sections.

167. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(*2*) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(*3*) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(*4*) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Bengal Tenancy Act.

(Chapter XIV.—Sale for Arrears under Decree.—Secs. 168-174.)

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

168. (*1*) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(*2*) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale-proceeds.

169. (*1*) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say :— XIV of 1882.

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(*2*) If the judgment debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder. XIV of 1882.

170. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(*2*) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(*3*) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (*1*) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(*2*) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder may bid at sale; judgment-debtor may not.

173. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding. XIV of 1

(*2*) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(*3*) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Application by judgment-debtor to set aside sale.

174. (*1*) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable

under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the 1882. Code of Civil Procedure shall apply in the case of a sale so set aside:

Provided that, if a judgment-debtor applies un- 1882. der section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

1882. (3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian 1877. Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(*e*) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

Permanent mukarrari leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

Útbandi, chur and dearah lands.

180. (*1*) Notwithstanding anything in this Act, a raiyat—

(*a*) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of útbandi and for the time being held under that custom, or

in case (*b*), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(*3*) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Homesteads.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVI.

LIMITATION.

Limitation in suits, appeals and applications in Schedule III.

184. (*1*) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Portions of the Indian Limitation Act not applicable to such suits, &c.

185. (*1*) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

(*2*) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(*2*) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (*1*), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Agents and representatives of landlords.

Power for landlord to act through agent.

187. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

Joint-landlords to act collectively or by common agent.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(*1*) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(*2*) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

Procedure for making, publication and confirmation of rules.

190. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

Rules under Act.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(*6*) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Provisions as to temporarily-settled districts.

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Saving for conditions binding on landlords.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle

any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates;

(*e*) any enactment relating to patní tenures, in so far as it relates to those tenures; or

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

SCHEDULE I.

(*See section 2.*)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 61 and 66.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the pargunas of Pattáspur, Kummudichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement officers.	The whole Act.

Act of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Bengal Tenancy Act.

(Schedule II.—Forms of Receipt and Account.)

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Thána
3. Tenant's name , Son of
4. Particulars of the holding—

Nakdi, Bighás ; rent Rs.

Baoli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Thána
3. Tenant's name , Son of
4. Particulars of the holding—

Nakdi, Bighás ; rent Rs.

Baoli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Bengal Tenancy Act.

(Schedule II.—Forms of Receipt and Account.)

DETAILS OF PAYMENTS (TENANTS PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baoli.		Jotkua, &c.		Cesses.		Signature of the landlord or his authorized agent.
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.	

DETAILS OF PAYMENTS (LANDLORD'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baoli.		Jotkua, &c.		Cesses.	
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.

Bengal Tenancy Act.

(Schedule II.—Forms of Receipt and Account.)

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighás	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5 Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bighás	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5. Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

Bengal Tenancy Act.

(*Schedule III.—Limitation.*)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year .	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months .	The date of the service of notice of the deposit.
(*b*) in other cases .	Three years .	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years .	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days .	The date of the decree or order appealed against.
From any order of a Collector under this Act, to the Commissioner.	Thirty days .	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years .	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Friday, the 27th February, 1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanatha Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble J. W. Quinton.

LAND ACQUISITION (MINES) BILL, 1885.

THE Hon'ble MR. HOPE introduced the Bill to provide for cases in which mines and minerals are situate under lands which it is desired to acquire under the Land Acquisition Act, 1870, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, Sir Steuart Bayley and the mover. He said:—"Considering the other important business which is before us on the present occasion, I think my colleagues will probably consider it sufficient if I refer them to the Statement of Objects and Reasons for a detailed explanation of the provisions which the Bill contains, without detaining the Council for the purpose of going into the various points in detail."

The motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

INDIAN SECURITIES BILL, 1885.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the law relating to Government securities. He said:—"The main object of the Bill is to legalise and conform the law to the practice obtaining in

England, and actually existing in the Indian Public Debt Offices, both before and after the passing of the Indian Contract Act, which recognises the right to sue, in cases where our securities are held jointly, by one or more survivors in the event of the decease of one or other of the original holders. Doubts have been raised as to whether this practice was in conformity with the provisions of section 45 of the Indian Contract Act. To remove those doubts this measure is about to be brought forward. Advantage will be taken of the occasion to introduce provisions enabling Government officers holding Government securities for public purposes to endorse as such, and not as individuals, the securities they may hold, and to have securities similarly endorsed to them; and, finally, advantage will be taken of this opportunity to conform the provisions of the law to the existing practice as to the issue of fresh securities in place of those which, from being overladen with endorsements, can no longer be conveniently endorsed; and also as to the renewal of lost or destroyed securities, provision being made for the protection of the Government against claims preferred to the securities in place of which renewed securities have been issued."

The motion was put and agreed to.

BENGAL TENANCY BILL.

The Hon'ble SIR STUART BAYLEY moved that the Reports of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal be taken into consideration. He said:—

OBJECT OF SPEECH.

"In moving that the Report of the Select Committee be taken into consideration, I do not propose to go behind what passed at the second reading of the Bill. Such questions as whether legislation was necessary at all, and whether legislation was barred by the terms of the Permanent Settlement, I consider to have been then decided, after sufficiently exhaustive discussion, and I, at least, shall not re-open them. What I propose to do is to review the work of the Select Committee; to show the nature and the reasons of the principal alterations they have made, and how far the Bill, as altered, is likely to succeed in securing those results which, in imposing on us our laborious and absorbing task, the Legislative Council had in view.

To review the work of Select Committee.

Constitution of the Committee.

"Before doing this, however, I may be permitted to say a few words as to the constitution and labours of the Committee. It was particularly strong in numbers, consisting of more than one-half of all the members of the Council. It comprised the selected representative of the Bengal zamindárs, and though the death of our lamented colleague Rai Kristodas Pal Bahadur in the middle of our discussions was a grievous loss to them, and indeed to all of us, yet their interests could hardly have found a better representative than in his successor, who with inflexible constancy and even a more perfect knowledge of detail than his predecessor, contested every inch of ground, and displayed a temper and ability which showed how wisely the British Indian Association had made their selection. The zemindars of Behar were specially represented, so also were the planters. Several of our members are of the legal profession, and in the course of that profession had acquired an intimate knowledge of the problems with which we had to deal. As will be seen from the published minutes attached to the Report, the cause of the raiyats had the advantage of the most powerful and most sympathetic advocacy. Nor were we deficient in the light that comes from a knowledge of the working of cognate systems in other provinces, and we had a further advantage in the assistance which a long experience in the task of comparing and tabulating the statistics of all the provinces of this vast empire enabled one of our members to extend to us.

Work of the Committee.

"The Committee sat 35 times last session, and 28 this session, each meeting lasting generally 3¼ hours. The correspondence they had to study fills a shelf some 3½ feet in length, and, whatever charge may be brought against them, that of want of industry is certainly not sustainable. I make these

remarks not merely that I may take this opportunity of expressing the thanks of the Government of India to the Committee for their unwearying labours and the great assistance they have given, but also in order to show to the Council that in a Committee so constituted the decisions of the majority may be accepted as at least *primâ facie* likely to be sound, and as certainly the result of an impartial and most earnest desire to do justice in the clash of conflicting interests.

Its prima facie value.

"In what I have now to say I shall follow, as far as may be, the order of subjects as they come in the Final Report of the Select Committee, though I must take you back by reference occasionally both to the Intermediate Report and to the Statement of Objects and Reasons which explained the original provisions of the Bill. And in this order the first point I have to notice is in regard to the definition of "estate" and "proprietor". It will be observed that the main alteration we have made is to add to the definition of "estate" words expressly including Government *khas mehals*, and unregistered *lakhiraj* lands, and we have omitted a proviso that appeared in Bill No. II. The insertion of the unregistered revenue-free lands is intended to meet a real omission in the first draft of the Bill. The insertion of Government estates is intended to clear up a singular misapprehension as to its being the intention of Government to exclude its own estates from the operation of the Bill—a misapprehension which, though entirely erroneous, has given rise to a good deal of criticism on our good faith.

Order of subjects.

Definition of "proprietor".

Insertion of Government of khas mehals.

"The original definition made the Bill apply to all land entered in any of the general registers of Government, and if any one will turn to section II, clause V (Vol. 1, page 137) of the Bengal Board's Rules they will see that all *khas mehals* and raiyatwari tracts, all lands even temporarily occupied by Government for public purposes, and all waste and other lands not assessed to revenue have to be entered in these registers. It is difficult to understand how any one should suppose in these circumstances that it was the intention of Government to exempt their own estates. I can only suppose that the proviso which appeared in Bill No. II, referring to certain Government taluks, was not fully understood. That proviso had reference to some *noabad* taluks in the Chittagong district, which, though for revenue purposes treated as tenures were for convenience sake entered in the register of estates, and it was in order to prevent a wrong deduction as to the nature of these tenures being founded on the fact that they were entered in the estate register that a late member of the Bengal Board of Revenue asked for the insertion of the proviso. For the purposes of this Bill it was not wanted, and it has accordingly been struck out, but I repeat emphatically that it was never the intention of Government to exempt its own estates from the substantive provisions of this Bill, and out of abounding caution we have inserted words which can leave no doubt on this point.

Original definition applied to all lands entered in Government registers.

And therefore to all Government estates.

Explanation of proviso.

Since omitted.

"Coming now to the chapter headed Classes of Tenants, we have, as stated in the Intermediate Report of the Committee, attempted to describe rather than to define the various classes. It was urged upon us very strongly by Mr. Dampier, that the most serious practical difficulty arose from the impossibility of deciding whether a man was a tenure-holder or a raiyat, and that it was necessary to give the Courts and Settlement Officers some assistance in coming to a decision, even drawing, if necessary, an arbitrary line founded on the extent of the holding, and we have accordingly provided that where local custom was not sufficiently clear upon the point the Courts should look to whether the land was originally taken for the purpose of direct cultivation by the holder, or for the purpose of indirect cultivation by settling raiyats on it, and that, further to assist the Courts in coming to a decision, there should always be a presumption that a tenancy of 100 bighas was a tenure and not a raiyati holding. The presumption of course is based on the fact that nowhere in Bengal does a man take such a large holding as 100 bighas with the object of cultivating more than a small portion of it himself, and the general opinion of the officers consulted is that the standard selected is a perfectly safe one.

Classes of tenants described, not defined.

Original object of the tenancy to be the test.

Presumption from 100 bighas.

"In Bill No. II, the presumption was made conditional on the person having

Condition as to

subletting a portion omitted

actually sublet a portion of his holding, but it seemed to the majority of the Committee that, if the presumption arising out of the size of the holding has any validity at all with reference to the object of the initial taking, the question of whether an acre or two is subsequently at a particular time sublet, is quite irrelevant. Of course if a large portion or the whole of it is sublet, this fact affords an indication of the original object of the holder which the Court would take into consideration, but it seemed wiser not to clog the presumption, by making it depend on the sublease of an arbitrarily fixed proportion of the holding—a proportion which would, in practice, be very difficult to prove, and we have therefore left it to depend entirely on the size of the holding.

Tenure-holders. Substantive position unchanged

"In the chapter on tenure-holders we have left the substantive position of the tenure-holder as regards his liability to enhancement unchanged. We have however somewhat modified the provisions of the original Bill relating to limitations on enhancement, and to registration on transfer. Under the original Bill the Courts, if granting enhancement against a tenure-holder, were bound to leave him not less than 10 per cent. and not more than 30 per cent. of his net rental. The minimum was subject to some alteration in the case of improvements made by the tenure-holder. The enhanced rent was also not to be more than double the previous rent, and was not to be again enhanceable for a period of ten years.

Limitations on enhancement omitted

"We have thought it expedient to retain the provision which says that the tenure-holder shall not be left with less than 10 per cent. of his net profits. But we have omitted the restriction which limited him to 30 per cent. of those profits, and on the other hand we no longer confine the enhanced rent to a sum equal to double the old rent.

"It seemed to us expedient to leave to the Courts a wider scope for discretion in both directions. In laying down a maximum, there is a danger of what is intended as a final limit being adopted as an equitable standard laid down by the legislature, and thus becoming the general rule, and we were unwilling to offer to the Courts any inducement to take a royal road to a decision instead of giving the fullest consideration to what would be fair and equitable under the circumstances. We have now directed them to have regard not only to the improvements of the tenure-holder, but to the circumstances surrounding the original lease, such as whether it was a reclamation lease, whether it was given in consideration of a bonus, and the like, and then to settle a fair and equitable rent, and we have extended the term for which the enhanced rent is to be fixed, both in the case of tenure-holders and for occupancy raiyats from 10 to 15 years.

What the Courts are to look to

Registration of transfers

"In regard to registration on transfer of tenures, this is what the Select Committee report :—

'We have, in sections 12 to 16 of the Bill, so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

'The Bill, in its previous stages, provided for a compulsory system of registration by the landlord This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office, and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

'A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of our Bill now under consideration, has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

'We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista, would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

'The provisions we have inserted in the Bill in order to give effect to these views are as follows:—

'First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of assurances. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.'

"We have made similar provisions for securing notice being given to the landlord in cases of sale for an ordinary decree and of succession. In case of sale for arrears of rent there is no necessity for such notice.

Occupancy-raiyats.

"I come now to what I look upon as the most important part of the Bill—Chapter V, which deals with occupancy rights, and on this subject I fear I shall have to ask your attention at some length. The main points are (1) Who is to have the occupancy-right? (2) What are to be the incidents of that right? (3) What rules shall regulate enhancement of the occupancy-raiyat's rent?

Acquisition of the right.

"A very full discussion of the first question will be found at pages 5 and 6 of the Statement of Objects and Reasons, the gist of which is summed up in the statement that the Bill as introduced in Council makes 'the acquisition of the status of the khudkasht, or as he is termed in the Bill the settled, raiyat, depend not on the holding of one and the same plot of land for 12 years, but on the holding of any raiyati land (whether the same or not does not matter) in the same village or estate for a period of 12 years whether before or after the passing of this Act.' That is to say, the Bill originally proposed to continue all occupancy rights already acquired; to define as above the status of a settled raiyat, and to provide that the settled raiyat of a village or estate as thus defined should have occupancy rights in all lands which he might legally occupy in that village or estate. Bill No. II went a step further. The discussion in Council two years ago brought out the fact that whatever might have been the effect of Act X of 1859 as to the legal acquisition of occupancy rights, it was, in practice, exceedingly difficult to prove those rights. The proportion of persons having acquired occupancy rights was estimated at from 90 to 70 per cent. of all the raiyats in the country, but unfortunately, as was said in the course of the discussion, those rights were 'moral' rights, and it was a matter of extreme difficulty for the individual raiyat to enforce in his own case by legal proof the rights which were generally admitted to have accrued to the raiyat in the abstract. Acting on this view, the Select Committee introduced into Bill No. II the presumption which will now be found at section 20 (7) of the Bill before the Council. The presumption runs as follows: 'When it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for 12 years continuously held that land or some part of it as a raiyat.' The Committee justified it as warranted by the existing state of things in the Lower Provinces, and because, while the presumption tends to simplify litigation, it is one which the landlord can have no difficulty in rebutting where it does not hold good. This presumption the Committee desire to maintain, and the only change they have introduced during their late session in this part of the Bill is the elimination of the words 'or estate,' thus limiting the right to the village in which the raiyat cultivates. As this decision of the Committee has been very forcibly attacked by His Honour the Lieutenant-Governor and some other members of the Committee, it is right that I should explain to the Council the reasons which led me, as representing the Government of India, to vote with the majority on this occasion.

Presumption of status.

Elimination of the words "or estate."

Point noticed by the Select Committee.

"The inconveniences attending the retention of 'the estate' in the definition of settled raiyat was touched on in the Select Committee's Preliminary Report of last year, and the point was one of those referred by the Bengal Government for the opinion of its officers. The great majority of those officers were against the retention of the words. This fact will be found in the 23rd paragraph of the Bengal Government's letter of the 15th September last, where also are given the reasons which led His Honour the Lieutenant-Governor to dissent from the opinion of that majority, and to insist on the extension of the status of settled raiyat to the estate as well as to the village.

"I have no doubt that in the course of the debate His Honour will do full justice to the arguments which are there so ably stated; but, put very briefly, they are these:—

Reasons urged by the Bengal Government for retention of the words.

"The expediency, he urges, of giving stability to the raiyat's position is admitted on all hands. Now 95 per cent. of the raiyats are so poor that they cannot possibly cultivate land at any distance from their homes, or, in other words, hold land away from their own village. On the other hand, if a man can get his landlord to give him a holding in another village (and it is only with his landlord's consent that he can obtain it), then it may be presumed that the landlord knows his man, and there is no sort of reason why he should not have the same stability of position in regard to his new land as he had in his old land.

"Now, if this were all that the definition involves, it would be difficult to contest the Lieutenant-Governor's position, and I for one would very willingly accept it; but the word 'estate' really involves quite a different set of considerations from these. An 'estate' is, so far as this argument is concerned, an administrative fiction.

Objections to retention of "estate".

"It is simply the area registered in our books under one number, and liable to be sold as a single unit in case of arrears of revenue being unpaid. For rent purposes it has no meaning. It is not all the area owned by a landlord, for a landlord may have many estates. It is not the possession of a single landlord, for it may be divided among numerous shareholders. It may be part of a village, or it may be 100 villages. It may be the property of one man, or the property of 100 men. It may be managed direct by the landlord or indirectly by a number of agents, or it may, as in the case of the Burdwan Rájá's estates, be let out into innumerable *patni* or permanent tenures (these tenure-holders subdividing it again), and in these circumstances what is one estate in the Collector's books becomes, for rent purposes, several hundred different estates, the immediate owners or managers of which have no concern with one another, can see nothing of each other's books, and know nothing of each other's raiyats. The Burdwan estate is of course an exceptional instance from its size, but to a smaller extent the same thing happens all over the country, and it is on this point that the objection is most difficult to meet. The effect would be to say that a man having once acquired occupancy-rights in any part of an estate should retain those rights with respect to any land which he may in any way acquire in any other part of the estate. Now, an estate, as I have shown, may be, and frequently is, subdivided among numerous tenure-holders or numerous managers. Any of these men may perhaps be able to say if any particular person has settled rights in his own particular tenure, but he cannot possibly know this in regard to the other tenures of the estate. He may let a man into his village as a non-occupancy raiyat, and the latter can immediately turn round and say that having acquired occupancy-rights in a village twenty miles away belonging to another tenure-holder, he claims to have them also in his new land. Clearly the Lieutenant-Governor's argument, deduced from the landlord's ability to know the character of his own raiyats, does not apply to cases of this class, and from this point of view his position is not an easy one to defend. The only reason for retaining the word 'estate' in the definition is to prevent a landlord from shifting his raiyat's holding from one village to another within his estate and so breaking down the occupancy-right. Now to this argument the

anger of shifting examined.

Lieutenant-Governor himself supplies the answer. He urges that 95 per cent. of the raiyats are so poor that they cannot hold land away from their own residence. This, if it shows that the danger to the landlord would not be great from retaining the word 'estate', also shows that the possibility of shifting raiyats, except within reach of their residence, is equally limited. The advantage to the raiyats of carrying with them the occupancy-right from one village to another within the same estate is very small, for it is shown that 95 per cent. of them are not in a position to take advantage of it, and the only raiyats who could take advantage of it, are those who have abandoned their own village, and its application in their case would be a misuse of the power and contrary to the proposed intention of the Bill.

"It is possible, no doubt, that shifting may occur in exceptional instances, where a landlord has several villages in his own direct management within reach of the cultivator's residence, and where he is powerful enough. But in the case of a very powerful landlord, strong enough to do this and determined to break down the occupancy-right, I am afraid he will always find some door open, and it must be remembered that not only is the number of landlords who are in a position to do this very small, but also the number of tenants to whom the process can be applied is small also.

"I suppose that, when the Bill becomes law, nine-tenths of the tenants will have secure occupancy-rights in the land they cultivate, and of the remaining tenth it is but an infinitesimal portion that can be exposed to the danger above explained.

Advantage of confining the khudkasht rights to the village.

"On the other hand, as long as we confine the accrual of occupancy-rights to the village, we have an absolutely unassailable position. The *khudkasht* raiyat's rights in the village are independent of those of the rent-receiver, and it matters not among how many estates the village may be divided. The raiyat is a *khudkasht* raiyat of *that village*, and has by custom, as well as by old law, a right of occupancy in any land he may cultivate in that village without reference to whom he pays his rent; but when once with the object of stopping gaps we take up more ground and apply the same rule to the estate, our position is no longer defensible. Not only is the theory new and unsupported by prescription or sentiment, it is open to a variety of practical objections, and by taking extreme instances it can be made to appear hopelessly ridiculous. Looking, as I do, upon the danger involved to the raiyats on the one hand, by omitting 'estate,' and to the zamíndárs on the other, by including it as for the most part of exceedingly small importance, I greatly prefer, for the above reasons, to omit it. I do not think any intermediate device, such as that of limiting the 'estate' to so much of it as is comprised in one pargana, or in one permanent tenure, or by extending the village to an artificial area within a fixed radius, would be found to work satisfactorily, and none of these suggestions wholly commended themselves to the Committee. I can only repeat my conviction that, though the danger of raiyats being shifted from one village to another within an estate is not wholly imaginary, it is not a serious danger, and that the provisions in the Bill, supplemented as they are by a working presumption, will sufficiently secure nine-tenths of the raiyats in their just right.

Intermediate devices

Incidents of the occupancy-right.

Transferability.

"Turning now to the incidents attached to the right of occupancy, it will be seen that we have made a most important change in regard to one of these incidents—transferability. Instead of legalising it and regulating it by law, we have left it everywhere to custom. This change was too important to be made at the direct instance of the Select Committee. It has the approval and sanction of His Excellency the Viceroy in Council. I am at liberty to state that I personally adhere to the opinion I expressed in the first debate, to the effect that both in Bengal and Behar the custom has taken such deep root that it is desirable to legalise and regulate it, and that in both provinces this course would, in the long run if not in the immediate future, be attended by beneficial results both to the cultivators, and to the productiveness of the country, and so far I sincerely regret the decision arrived at. But I am bound to admit, apart from the arguments directed against the principle of

My own adherence to it.

transferability,—arguments founded on injury to the landlord, expropriation of the raiyat, and rack-renting of the actual cultivator,—I am bound to admit that the Committee found immense difficulty in devising any practical scheme of pre-emption, any satisfactory safeguard against the dreaded money-lender, any equitable method of securing to the landlord the fee which he now gets in some parts of the country, without injuring the raiyats of other parts where they habitually transfer without payment of a fee, and that in view of these difficulties there is something to be said for leaving the custom to strengthen itself, and crystallise into a shape which may hereafter render its regulation less difficult than it is at present. We have, moreover, made it clear that where the custom of transfer without the landlord's consent has grown up, it is not the intention of the legislature in any way to interfere with it. In all other respects we leave transfer alone, and the Council will not have to consider the schemes of pre-emption, registration, and landlord's fees, which occupied so much of the time and attention of the Committee.

Difficulties in the way of giving effect to it.

Custom not interfered with.

Sub-letting.

"While we have dealt thus with transfer, we have not felt it possible to interfere with the long-established right of sub-letting.

"The existence of this right is admitted in section 6 of Act X of 1859, and the authorities consulted have almost unanimously declared that it is impossible now to interfere with it. Moreover, if the tendency to alienate, by way of transfer, is not allowed free play, it must, following the line of least resistance, force an outlet in sub-letting.

Scheme for restricting.

"To check this tendency, or at least to nullify its evil effects, was the intention of the provisions inserted as section 37 of our Intermediate Bill No. II. The scheme is explained fully in paragraph 27 of our Preliminary Report of last year. The main point of it was that an occupancy raiyat, who sub-lets more than half his holding, should be deemed to be a tenure-holder, and thus his sub-raiyats should be in a position to acquire rights of occupancy. But it was felt that this would envelope all rent-litigation in such clouds of uncertainty that it could only be permitted to take effect on the tenure being registered, and on this difficulty the whole scheme was wrecked. It was the very general opinion of the officers consulted, that in such cases registration would never be spontaneously sought for, and could not be enforced, and in view of the general objection taken to it on this score it was withdrawn. All that we have felt ourselves able to do in this direction is to provide in a subsequent portion of the Bill (section 85), that a sub-lease, given without the landlord's consent, shall not be valid against him unless registered, and that no sub-lease for a term of more than nine years shall be registered. To such sub-leases we have given some protection which I shall refer to hereafter, but if it is really desirable to check sub letting, about which I am personally very doubtful, it will certainly not be done by leaving the sub-lessee defenceless against his lessor.

Withdrawn.

Protection now given.

To attempt by legislation.

Enhancement of an occupancy-raiyat's rent.

"The next branch of this subject is as to the rules that should regulate enhancement of an occupancy-raiyat's rent, and in this we have made some important alteration-. Dealing, first, with enhancement by private contract, it will be observed that section 39 of the original Bill provided that such contracts should only be valid after being approved and registered by a revenue-officer, and the revenue-officer was not to accept any such contracts if the enhanced rent was more than 6 annas in the rupee above the old rent (these figures were put in tentatively), or more than one-fifth of the gross produce.

By private contract.

As first proposed.

Gross-produce limit.

"It was at an early stage obvious to the Committee that, even if the gross-produce limit was accepted as applicable to enhancements made by a Court, it was inapplicable as a test precedent to the registration of a contract.

Inapplicable to contracts.

"It would have meant that in every case before a contract could be registered, an exceedingly complex judicial enquiry should take place—an enquiry, too, in which the Revenue-officer would be practically powerless, as the only evidence available would be that of the two parties, who were *ex hypothesi* in agreement as to the terms. The approval of the Revenue-officer, though, if confined to

the form of the contract, strictly in accordance with the conditions of the Permanent Settlement, was felt, when extended so as to cover the question of the fairness of the conditions, to leave too wide a discretion to the Revenue-officer—a discretion, moreover, which, for the reasons above given, he would in practice be powerless to exercise.

Approval of the registering officer no longer required.

"The registering officer will now, under the amended section, merely have to see that the agreement is not contrary to the express stipulations of the contract sections of the Bill, and that the raiyat understands it and is willing to enter in to it.

Fractional limits considered.

"The Committee have, however, it will be seen, reduced the fractional limit within which enhancements can be made by contract to two annas in the rupee. About this clause there was great difference of opinion in the Committee.

"On the one hand the objectors urge that it is useless putting in any such limitations at all, as if the raiyat agrees to pay the enhanced rent he will not care what the deed recites as to the amount of the previous rent, and while it will cause very serious embarrassment to scrupulous landlords, it will in no way serve as a check on the unscrupulous among them. It is also urged that any such check will force a landlord who wishes to enhance to take his raiyat in each case into Court, and then to demand more than he would otherwise be willing to accept—a process which is admittedly full of injury to the raiyat; that whereas if the landlord gets a decree for a sum more than two annas in the rupee on a test-case, instead of being able, as now, to make contracts on the same terms with his other raiyats, he will hereafter have to bring them one and all individually by separate suit into Court to confess judgment, and will thus obtain the same result only by a process far more expensive and far more demoralising to the raiyat. Another objection is that it altogether fails to meet the case of raiyats who are allowed to cultivate at specially low rents on condition of growing indigo or other special crop—a condition frequently used both by Government and by indigo-planters. When this condition comes to an end, there is no means of voluntarily adjusting the rent to the altered circumstances. The force of these arguments cannot be denied. On the other hand it is urged that 12½ per cent. (a fraction which allows of the rent being enhanced by 25 per cent. every 30 years, by 100 per cent in less than 90 years), is as much as a moderate landlord would ever be likely to ask as an addition to the rent; that it is quite reasonable, if the landlord wants a larger enhancement than this, to send him to the Courts for it, where he can prove its reasonableness; that the scheme encourages moderate enhancements, and discourages any large enhancements; that in some parts of the country, and precisely in those parts where the raiyats are least able to protect themselves, and most likely to agree, under pressure, to any terms which their landlords may impose, the rents are already so high that no sufficient margin for subsistence is left to the raiyat, and a single bad season suffices to break him down; and consequently that, in the absence of the checks which the Committee have removed from enhancement by the Courts, it is imperatively necessary for the very existence of the raiyat that enhancement by contract should be restricted within comparatively narrow limits. It is for the Council to say which of these views should prevail: for myself, I feel very strongly the necessity of some such check as the Bengal Government urge in regard to the over-rented parts of Behar, and whatever doubts there may be as to the efficiency in practice of this particular check, no competent observer can doubt the reality of the danger at which it is aimed.

Exception in the case of landlords' improvements.

"We have inserted a section exempting from these conditions enhancements made *bonâ fide* on the ground of landlords' improvements, because we look upon such enhancements in the light of interest on the capital expended, and we desire to encourage improvements.

Period during which fresh enhancement is barred extended to 15 years.

"One point remains under this head. We have, in order to lessen the harassment caused by frequent enhancements, provided that the enhanced rent, whether under contract or under decree of Court, should run for 15 years. This is an extension of the term (10 years) originally proposed by the Rent Com-

mittee, but it is only half of that (30 years) recommended by the Famine Committee. It is a very substantial boon to the raiyat, but is, we consider, perfectly just and necessary.

Enhancement in Court.

"Coming now to enhancements by decree of Court, we have to consider the grounds on which enhancement can be demanded, and the considerations by which the Court should be guided in granting it.

"Under the Bill as first introduced, the great regulator of enhancements was intended to be the table-of-rates. This scheme, as I shall hereafter have to explain, has been eliminated from the Bill. Where a table-of-rates was not in force, the Bill provided for enhancement on the following grounds :—

Three grounds.

(1) the prevailing rate;

(2) increase of productive powers of the land;

(3) increase in average prices of produce.

"Of these, the prevailing rate remains in a slightly altered form. Increase in the productive powers has been subdivided into the two efficient causes which alone can bring it about so as to justify in our opinion the enhancement of rent. All other cases seem to resolve themselves into cases, such as railways or canals, in which the landlord will get his enhancement by improvement of prices, or else into improvements effected by Government or by the raiyat. In these cases we do not see any just ground for enhancement. The two elements remaining are fluvial action and landlords' improvements, and these two are maintained as grounds on which a landlord can demand an enhancement. The third of the old grounds—'increase of prices'—has been retained and rendered, in my opinion, an exceedingly valuable instrument in the landlord's hands for obtaining an equitable increase of rent.

"To avoid misapprehension, I may mention here that increase of area is treated separately, as we do not consider that increased rent demanded on this ground is, properly speaking, an 'enhancement'.

Prevailing rate.

"Going back, then, to the first of these grounds of enhancement, it will be seen from the dissents that we have been vehemently urged to get rid of the prevailing rate altogether as a ground of enhancement. This was first moved by the Bengal Government in Committee last year and was not accepted. It was then referred for the opinion of the local officers, and the outcome of that reference was to show a very even balance between those who were in favour of abandoning it and those who were in favour of retaining it in such a form as to safeguard it from abuse. The reasons which led the Lieutenant-Governor to desire its abandonment are very forcibly explained in paragraph 40 (pages 25 to 28) of his letter of the 15th September. Very briefly summarised they are as follows. By the Permanent Settlement a raiyat's rent might, as a rule, be brought up to the pargana rate. The theory of the pargana rate was that it was a fixed and ascertainable entity, and this was in many parts of the country no doubt the fact. Where there was such a rate authoritatively established, it was fair, and was part of the old right of the State landlord, that the raiyat, when not protected by patta, should pay according to that rate. But the established pargana rate disappeared, and there is now no prevailing rate.

Reasons suggested for abandoning the prevailing rate.

"The landlords have been accustomed to take what they can get; rents are as often as not fixed in a lump sum on the holding and not differentiated according to the various qualities of the soil.

"In the absence of a real prevailing rate, the Courts have to take the average of the most prevalent rates in the vicinity. This means that A's rent is to be enhanced because B and C, being in debt, or otherwise at their landlords' mercy, have agreed, or pretended to agree, to pay enhanced rates. There is ample evidence that, apart from the natural effect of such competition-rents as have replaced customary-rents, bogus-rents are fabricated and kept on the jamabandis with a direct view to bring up the standard of the prevailing rate. Proposals have been made to exclude from consideration in determining the

prevailing rate the effect of recent initial or competititive rents, but in the long run this would be impossible, and any way it does not cover the whole ground. These considerations led the Lieutenant-Governor to propose the absolute abandonment of the section, except where a prevailing rate is *established* by a Settlement-officer under Chapter X. The question was very fully discussed in Committee, and the result is given in paragraph 20 of our Report, which runs as follows:—

Reasons which prevailed with the Committee for retaining it.

'20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent"; we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.'

Modifications in form.

"I may have more to say on this subject when specific amendments are proposed, but for the present I will only observe that I believe in the amended section we have accurately retained the existing substantive law as interpreted by the Courts, and have only introduced the necessary safeguards above explained; we have, however, added a qualifying clause which would enable the raiyat to plead any sufficient reason there may be for his being allowed to hold on at a lower rate, have limited enhancement to those cases where the difference between the raiyat's rate and the prevailing rate is substantial so as to prevent the section being used for purposes of harassment, and have indicated that where a local enquiry is necessary to ascertain the prevailing rate it should be conducted by a properly qualified Revenue-officer.

Increase of prices.

"The next ground in the order of our Bill on which enhancement may be demanded is increase of prices. We have made some alterations under this heading, but I would first explain the scope of the section. The prices referred to are those of the staple food-crops, and are entirely independent of the particular crop which may happen at any particular time to be grown by the raiyat. We take the prices of staple food-crops as our standard both on grounds of principle and on grounds of convenience. Starting from the principle that existing rents, even if not corresponding strictly to soil-capacity, are yet to be considered fair and equitable, we hold it to be entirely unjust and contrary to good policy that they should be made to vary according to whether the raiyat at any particular time grows a special crop which may be fetching a high or a low price. We would not make the landlord's rents depend on whether the raiyat is shrewd or the reverse, nor should they in any way in the existing condition of agriculture fluctuate with the fluctuations of foreign markets for such crops as jute, safflower, oilseeds, cotton, &c. What we do mean is, that the landlord should not unduly suffer nor the raiyat unduly prosper from a permanent or long continued alteration in the value of money, and the only practical standard which can be applied to test this point is that of the price of staple food-crops.

Alteration in law to facilitate proof.

"We have made other alterations. Formerly, it was necessary for the landlord to prove to the Court when the rent was last fixed, in order to be able to enter into any comparison at all. The Court may under this Bill take any period during the currency of the rent that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods. In order to facilitate the comparison, the Local Government will have to draw up, from the materials which are available to a certain extent for the last 20 years, statements of past prices, and in future to record prices accurately, publish them for criticism, and finally, after revision, publish statements of annual average prices which the Courts will receive as presumptive evidence.

"We have, I think, by this scheme redeemed the pledge that Government would put the power of enhancement 'on such a footing that it will readily be

enforceable in practice.' Before leaving this part of the subject, I must refer you to paragraph 18 of our Report, which deals with the deduction to be made to cover the effect of increased prices on the cost of cultivation. We are of opinion that the tendency in this country is for the cost of cultivation to increase in a higher ratio than prices. So far as the labour is done by the cultivator's family or by labourers paid in grain (as is mostly the case in India), no benefit under this item can accrue to the cultivator from increase in prices. On the other hand, as population and prices have increased, pasturage has diminished; cattle are dearer to buy, dearer to keep, and less remunerative; manure is dearer, and so is fuel; and all these elements have to be taken into account. The Local Government proposed to deduct one-half for the increase of prices to cover the increased cost of cultivation; we recognised the impossibility of asking the Courts to solve the hopeless problem of increased cost in each case, and found it necessary to draw an arbitrary line. We have drawn it at one-third.

Deduction to cover increased cost of production.

"In regard to the two remaining grounds of enhancement, namely, increase in productive powers caused by landlords' improvements and by fluvial action, I would only mention here that we have provided facilities for at any time registering and recording landlords' improvements, and we have decided that under the head of fluvial action the Courts shall not take into account any increase which is merely temporary or casual.

Remaining grounds of enhancement.

"Before leaving this subject of enhancements I must explain the alterations we have made on the limitation to be placed on enhancement.

Limitations on enhancement.

"The Bill, as originally introduced, provided that rents should never be enhanced so as to exceed one-fifth of the value of the gross produce, estimated in staple crops, nor should enhanced rent ever exceed double the old rent. In the Intermediate Bill (No. II) the gross produce limit had been rejected, and on the other hand the fractional limitations had been raised in one case to eight annas in the rupee, in others to four annas in the rupee. In the present Bill we have with the consent of the Bengal Government abandoned these fractional limitations without being able, as the Bengal Government wished, to restore the gross-produce limit.

"I hope to be pardoned for touching on this point at some length.

"The gross-produce limit was suggested by the Behar Committee in 1878, who would have fixed it at one-sixth; it found a place in the scheme of the Rent Commission and of Sir Ashley Eden's Bill at the tentative figure of one-fourth; it was one of our proposals to the Secretary of State, and was incorporated in the Bill as introduced into the Legislative Council, having then been changed at the instance of the Bengal Government to one-fifth. I may also say that, in respect to its principle, it had at that time on the whole been not unfavourably received by the zamíndárs. It was not therefore lightly excluded from the Bill by the Select Committee which sat last year, though grave doubts had been expressed in the debate in this Council, among others by His Honour the Lieutenant-Governor, as to the possibility of adopting any universal standard. The line of argument which led to its abandonment was somewhat as follows. In all the previous stages of the discussion the machinery on which reliance had been placed for fixing a fair rent had been what is called the 'table-of-rates.' This meant that a Revenue-officer should after due enquiry, classify soils over a given area, and, judging mainly by existing rent-rates fix a fair rate of rent for each class of soil. This enquiry would have involved by a minute process of investigation and experiment the ascertaining of what was for each class of soil the average gross outturn in staple crops. Thus ascertained, the figures would remain on record, and in suits for enhancement, &c., the Courts would only have to refer to them, and would thus be able, by applying the maximum test, to check any obviously unfair and unreasonable enhancement.

Gross-produce limit.

Reasons for abandoning it.

Failure of scheme for table-of-rates.

"Before, however, the Committee had begun its labours, the Lieutenant-Governor had, at the instance of the Government of India, deputed selected officers to four or five experimental areas to ascertain if, as a matter of fact,

rents had any such fixed and stable relation to classes of soil and produce as would enable the Revenue-officer to fix any table-of-rates based on existing facts. The result of the enquiry was disastrous to the scheme of a table-of-rates. It was found in almost each area subjected to enquiry not only that the multiplicity of rent-rates was almost inexhaustible, but that little relation could be traced between the existing rates and the quality of the soil. Consequently the table-of-rates as an adequate general machinery for regulating rents had to be abandoned, and the matter relegated to a great extent to the discretion of the Courts; and with the table-of-rates went the process of ascertaining and recording in an accessible form the average gross produce of each class of soil.

"This rendered it necessary for us to reconsider the expediency of retaining the gross-produce test as a maximum, and finally we decided, after some discussion, to abandon it both as unworkable and unfair. It is obviously unworkable in regard to private contracts, because it involves an enquiry which no registering officer can make before a contract is registered.

Impracticable in regard to contract.

"We hold it to be unworkable by the Courts, because no Court has at its disposal the machinery for ascertaining the facts. The Lieutenant-Governor has traversed this argument by asserting that we do not want scientific accuracy; and such an estimate as we do require can be obtained by the assistance of a panchâyat of raiyats who are presumably experts, and he points to the estimate made for grain-rents as an illustration. But the estimate in grain-rents is an estimate of the actual crop on the ground before their eyes—an estimate which is obtained by reaping and measuring samples. What the panchâyat in the other case would have to ascertain is very different. They would have to say what a field which may be growing tobacco or sugarcane or opium would grow, not in any particular year, but over an average of years, if it was sown with staple crops. They or the Courts would then have to ascertain what would have been the price which the raiyat might have received for this produce over an average of 5 or 10 years. There is ample evidence to show that we have hitherto failed to ascertain with anything like accuracy what a bigha of land *does* produce over an average of years of the crop actually grown upon it: to ascertain what it might produce if some other crop were grown is an infinitely more difficult problem. Then the panchâyat must be paid, which adds to expense, and there is always the danger of their opinion being in accordance with the longest purse.

Impracticable in regard to suits.

"The unfairness of the test is of not less importance. The produce on two fields being the same, the maximum rent as limited by this test is the same; but on one of these fields it may cost twice as much to raise the crop as on the other: the margin left to the raiyat will in one case be sufficient; in the other it will not preserve him from starvation.

Unfairness of the test. In relation to cost of cultivation and to area of holding.

"The relative size of the holding will similarly interfere with the applicability of the test. The same margin of produce per bigha left to the raiyat may be quite adequate where he holds 20 bighas, and may mean absolute starvation where he holds 4 only.

"Another very serious objection to the scheme is this: as population advances the average area of each man's holding must diminish, and consequently the raiyat will require a larger proportion of the gross produce of his holding for the mere support of himself and his family. A less proportion will therefore remain as rent for his landlord. This is a necessary tendency while population increases at its present rate, and is, moreover, wholly confined to unscientific agriculture for subsistence. At the beginning of this century we have, in the Regulation I of 1804* for invalid jaghirs, a clear proof that Government then thought a cash rent equal to two-fifths of the gross produce a fair standard. To-day the Government of Bengal think one-fifth the maximum consistent with

Dangerous effect of fixing a permanent standard in face of increasing population.

* Section IX (6):—

"The proprietor of the land shall be entitled to rent in the proportion of two-fifths of the annual produce, whether it be in kind or in money, as may be agreed on between the parties concerned in the adjustment. This rent shall not be liable to any variation and shall be paid to the zamindár or other proprietor."

safety. If the Government of that day had been called on to fix a general standard they would have fixed it probably at two-fifths. It would be as dangerous for us to lay down now a permanent standard of one-fifth up to which, by the inevitable law which makes water find its level, rents would surely rise, as it would then have been for Government to lay down the standard at two-fifths. Until you can limit the amount of population to be fed you cannot with any safety say what proportion of the gross produce shall go to the landlord and raiyat respectively.

Committee objected to its principle and doubted its efficiency in practice.

"The Committee therefore, after full consideration condemned the principle of the gross-produce limit, because it left out of consideration other elements of equal or more importance in determining a fair rent. It took no thought of the cost of cultivation or of the size of the holding, or of the relative productiveness of it. They also objected to it in practice, because they thought the problem was one which the Courts could not solve, and because the attempt to solve it must add overwhelmingly to the cost of rent-suits—a burthen, which, as the *onus probandi* is on the raiyat, must inevitably fall on him in a large number of cases. So far we had not discussed the special fraction which it was proposed to introduce. Last autumn the Bengal Government again urged in the strongest terms the imperative necessity of retaining the gross produce limit as the only ultimate check on enhancements which might otherwise, under the prevailing-rate scheme, become destructive to the raiyat, and which certainly could not with safety be borne in Behar.

Consideration of test with reference to specific limit of one-fifth.

"The matter was again carefully considered, there being a decided readiness to accept the necessity of establishing a final check if one could be found, and this time the question was considered with reference to the special fraction proposed. The evidence as to average rates in each district is not such as can be altogether relied on, but, such as it is, it satisfied the Committee that the contention that a raiyat *can* not pay more than one-fifth of the estimated value of the staple crop is one which it is impossible to maintain. So far as it goes, and so far as the enquiries made by selected Revenue-officers last year bear upon the point, the evidence shows that in many districts which are not supposed to suffer from rack-renting, and in Court of Wards' estates as well, the raiyats *do* pay more than this proportion. But the evidence shows more than this: it shows that the relation of rent to gross produce varies so enormously (the Board give the result of their experiments as showing a variation from 67 per cent. to 7 per cent.), that it would be impossible to apply any one standard to all parts of the country, and that no sufficient remedy could be found in the direction of altering the limit to one-fourth or any other uniform fraction. It occurred to me that the test might perhaps be safely applied after a special enquiry in each district or smaller local area such as the table-of-rates contemplated, but this idea was not favourably received, and the Government of Bengal no longer press the scheme. Its loss however is made a ground of objection to the Bill as it stands; but fully as I recognise the real deficiency in the Bill of any adequate check on rack-renting in certain parts of the country, where enhancement is incompatible with the welfare, almost with the existence, of the raiyat, I must yet say that I consider the Committee were amply justified in refusing to accept a remedy which, in the shape proposed, was indefensible in theory, and would probably prove useless in practice.

Possibility of applying it after special enquiry.

Finally abandoned.

Fractional limits condemned.

"The alternative fractional limits which had been inserted last year by the Committee, meanwhile, had been condemned by the Government of Bengal.

"As I have said in regard to tenures, there was a danger in establishing a maximum which would inevitably tend to become a standard of enhancement. They involved also the erroneous principle of adding most to the highest rent and least to the lowest; and we thought that, looking to the limitations which the grounds of enhancement carry within themselves, namely, in one case the rate prevailing in the village, and in that of prices the actual increase, minus one-third, it would be safer to trust to the discretion of Courts and to leave them within those limits to be guided by what is fair and equitable.

"We have therefore discarded the fractional limits on enhancement in Court, but I must repeat that it was the abandonment of these successive checks which led the Bengal Government to urge on us so strongly the necessity of strictly limiting enhancement by contract, and I trust this fact will be remembered when dealing with the limit of two annas in the rupee to which such contracts are subjected. And abandoned on condition of limitation of enhancements by contract.

"The only other point remaining in this chapter which I need notice, is the alteration which we introduced into the provisions for produce-rents in our preliminary Bill of last year. For the reasons given in paragraph 48 of the Intermediate Report, we eliminated the maximum that had been imposed on produce-rents, and we gave discretion to a Revenue-officer to refuse an application for commutation if opposed. We also added rules for his guidance in deciding what the equivalent money-rent should be. I need not take up your time at present by examining these rules. Produce-rents.

"Having dealt with the occupancy-raiyat, we must now turn to the non-occupancy-raiyat, who was called in the original Bill the ordinary raiyat. This name we have changed for reasons given by Mr. Reynolds and the Government of Bengal, to the effect that the non-occupancy-raiyat is not an ordinary raiyat, the ordinary or customary raiyat being the khudkasht. Non-occupancy-raiyats.

"Around this raiyat, whatever he be called, a severe conflict has arisen. Some of the minutes of dissent declare that a great deal too much has been done for his protection, others say that he is entirely unprotected. Mr. Reynolds says the Bill 'affords him no protection as regards his rent, and that it does nothing to facilitate his acquisition of the right of occupancy.' Babu Peári Mohan Mukerji says: 'The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat.' The Maháráját of Durbhunga agrees with the latter, Mr. Amír Alí with the former. His Honour the Lieutenant-Governor also says the Bill 'leaves the non-occupancy-raiyat practically unprotected, and that on this point the Committee have departed from the intentions of the legislature and the conclusions of authoritative opinion.' Differences of opinion.

"If this view were correct, I could only reply that among the conclusions of authoritative opinion which we have not departed from is one no less authoritative than that of His Honour the Lieutenant-Governor himself. In his speech on the second reading of the Bill in this Council, the Lieutenant-Governor, after urging that the Regulations of 1793 attempted only to protect the *khudkasht* raiyat, and that only so long as we dealt with his representative was our position unassailable, went on to say that 'it would be unreasonable and inequitable to extend the right of occupancy to every raiyat in the country,' and that he most cordially concurred in the maintenance by the Secretary of State 'of the distinction deeply rooted in the feelings and customs of the people, not only in Bengal but in most parts of India, between the resident or permanent, and the non-resident or temporary, cultivator.' 'It was to the resident raiyat and him alone', he says further on, 'that any ancient privileges and rights appertained' and accordingly when he came to deal with the details of the Bill, he said 'I am unable to accept the provisions of Chapter VIII (the ordinary raiyat) which deal with compensation for improvement and disturbance. I think too, though I myself have suggested a 20 per cent. (gross produce) limitation, that it may be impossible to enforce a uniform limitation of that kind in all parts of the province.' The Lieutenant-Governor's view.

"If then it were the case that we have given the non-occupancy-raiyat little or no protection, I might at least plead high authority for such a course; but I deny that it is the case, and I do not rest our defence on such authority. The line of action we have endeavoured to follow has been to keep, as directed by the Secretary of State, a marked distinction between the occupancy and non-occupancy raiyat, but to facilitate the acquisition by the latter of occupancy-rights, to give him some protection against undue enhancement, without barring the zamindar absolutely from all voice in the selection of his tenants or in the determination of their rents. One party of the dissentients would Nature of protection afforded by the Bill.

leave the non-occupancy-raiyat absolutely at the mercy of the zamindar without protection of any kind; the other party, in its endeavour to stop up every gap by which a zamindar could possibly find a means to injure his tenant, would force the zamindar to retain for ever, subject to a heavy fine, any paikasht raiyat he had once admitted on the land, and would make the acquisition of occupancy-rights inevitable.

"The latter course would be contrary to the orders and intention of the Secretary of State, the former would be destructive to the stability of the cultivator and against the interests of public policy. I think that the attacks of the dissentients from two such opposite standpoints may fairly lead the Council to conclude that we have adopted a just and moderate view, and have taken the line which is fairest to the two contending interests.

Protection under the existing law.

"Under the existing law the non-occupancy-raiyat can get a patta at the rates agreed upon with his landlord. He can be ejected at the expiry of his lease, or, if without a lease, at any time after notice to quit. His rent can be enhanced as often as the landlord likes after service of notice of enhancement.

Protection under the Bill.

"We have provided that, after the expiry of an initial lease, he should still be liable to be ejected, but only after his first lease, not if he is permitted to hold on; and unless the suit for ejectment is brought within six months after the lease expires, the right to eject on that ground lapses. He will always be liable to ejectment by *suit* for non-payment of arrears. He will be liable to enhancement in two ways, either by registered agreement, or by suit in Court, but enhancement by suit carries with it, if the raiyat accept it, a lease for five years at the rate fixed by the Court, after which, unless he has meanwhile acquired rights of occupancy, he can be ejected.

Alteration made by the Committee.

"The Bill, as originally introduced, was silent as to ejectment after the initial lease, and the check it proposed on undue enhancement was (1) a gross produce limit, and (2) that the zamíndár should pay compensation for disturbance graduated according to the ratio of enhancement demanded. It is on these points that the Government of Bengal objected to the conclusions of the majority, and asked us to go back to the original Bill. In regard to compensation for disturbance, I may say that at the original discussion in Council it was more objected to than any provision in the Bill, and it was condemned, not only, as I have already mentioned, by the Lieutenant-Governor but also in stronger terms by Mr. Reynolds. He said: 'the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. We have not the least experience to show how this provision would work in India, and the principle of it seems to me objectionable.' We found that Mr. Reynolds' condemnation was endorsed by others whose opinions we could not disregard, and we abandoned it. As a substitute the judicial lease for five years was proposed and accepted, and so far the difference between the safeguard provided in the original Bill and that now given is that whereas, under the old Bill, the non-occupancy-raiyat objecting to pay the enhanced rent demanded of him could be ejected at the landlord's discretion subject to the payment of a fixed sum of money, he can now have the rent fixed by the Court; if he refuses to pay this rent he must go; if he accepts he is secure in his holding for another five years.

Abandonment of compensation for disturbance.

Substitution of judicial rent with a five years lease.

Effect of this protection.

"The security from ejectment and from undue enhancement which this provision affords, and the additional security given by the rule that all agreements for enhanced rent must be registered, do unquestionably facilitate the acquisition of the occupancy-right, though they are of course a long way short of the security which that right confers; and I am bound to say that, on this point, the two sets of criticism which I have read out to you seem to me equally exaggerated and unreal.

Initial lease.

"There remains the question of the initial lease. I have explained to you that, under the existing law, the landlord has a right to eject a non-occupancy-raiyat at the end of his initial lease.

"The Government of Bengal urged that this provision should not be maintained, and that, after having once been admitted to cultivate, no tenant should be ejected except upon receipt of compensation up to one-fourth of the rent which he has paid. I have explained to you that the considerations which led the Committee to reject this proposal were, *first*, that it was only fair that a zamíndár should be able to give a new tenant a period of trial to ascertain if he was likely to be a satisfactory tenant before establishing him permanently, and, *secondly*, that the proposal led directly to the effacement of the distinction between the two classes of raiyat which the Secretary of State had insisted on our maintaining. I do not, however, deny that the provision is one which can be taken advantage of to prevent new tenants hereafter from acquiring occupancy-rights. It will not hurt existing tenants to any great extent; it can only touch in the future the restricted class who are not settled raiyats of the village, and these it can only injure where a regular lease is given, and where the zamíndár is careful to sue within six months of the expiry of the lease.

Objection of the Government of Bengal.

Reasons for retaining the rule.

Dangers inherent in it.

"Thus restricted I should not have supposed that the right could do serious harm, but the contention of Mr. Reynolds has received valuable support from the quarter whence he can least have expected it, and the representative of the zamíndárs corroborates his prediction that they will use this provision to the utmost of their power to prevent the accrual of the occupancy-right. He says, and he ought to know, that 'having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short-term leases, with a view to protect his interests, and thus reduce non-occupancy raiyats to mere tenants-at-will.' It is true they have the power at present, and to some extent, perhaps, make use of it, but I had not expected such authoritative testimony to the fact that the zamíndárs prefer a set of serfs to stable and improving tenants; and I confess that if anything could make me doubt the wisdom of the decision arrived at by the Committee, it would be the gratuitous testimony of the Bábú to the evil use which will be made of it.

View of Babu P. M Mukerji.

"The application of the gross-produce limit to the non-occupancy-raiyat's rent must, I fear, stand or fall with its application to that of the occupancy-raiyat. If it were deemed applicable to the latter I should be glad to see not only the system but the identical standard applied to the former, but if it is condemned as impracticable in the one case, it will be difficult to maintain the propriety of applying it to the other.

Gross-produce limit.

"The next chapter deals with the under-raiyat. This class we have left as in the Intermediate Bill No. II, with only the nominal protection of a fractional limit above the head rent beyond which the lessor cannot recover in Court. This is to my mind the most unsatisfactory part of the Bill, but the Committee were unable to afford to under-raiyats any real protection without subverting the customs and traditions attaching to the status. So long as they are liable to arbitrary ejectment, there can be no protection against arbitrary enhancement, and the protection afforded by the Bill can in practice only refer to arrears of rent. With the right to eject, the lessor will always prefer this method of attaining his object to that of a suit in Court, so that the protection is, as I said, nominal. In fact the only practicable method of protecting them would be by giving to under-raiyats sub-occupancy rights against the lessor, of the same nature, though not necessarily in the same degree, as the occupancy-raiyat has against the tenure-holder above him. No such plan would, at the present time, be favourably received, as it is contrary to existing custom and is in that sense justly condemned as revolutionary. Moreover, the question is not at present of serious importance, though as population increases it is likely to become so; but I wish to say that in regard to the under-raiyat I do not think the Bill can be considered to be in any way a final settlement of the difficulty, and the next generation will probably have to reconsider his position.

Under-raiyats.

Protection visionary.

Problem remains to be solved.

"I come now to Chapter VIII, which is headed General Provisions as to Rent. The chapter opens with the sections which contain the well-known

Chapter VIII.

The 20 years' presumption.

presumption that a tenure-holder or raiyat, who has held for 20 years at an unchanged rate of rent, shall be presumed to have held at that rent from the time of the Permanent Settlement and shall therefore not be liable to enhancement.

Not to apply to produce-rents.

"The first alteration to be noticed is that we have omitted the provision making this presumption applicable to produce-rents. It seemed clear to us that where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self-acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room therefore for the presumption. We have, moreover, exempted from this presumption tenures in any area to which the registration of tenures under the Bengal Bill is applied, and both tenures and holdings in any area in which a record of rights is made. In those cases the rights having been once registered there is no ground for continuing a presumption the object of which is to facilitate the proof of existing rights rather than to create new rights.

Nor to recorded and registered holdings.

Question of period for calculating the presumption.

"A more important change, however, was strongly urged upon us, which the majority of the Committee did not see its way to accept. Ever since the presumption was created in 1859, the period to be taken into consideration has been the 20 years immediately before the institution of the suit.

"It was argued, and the argument is repeated in some of the dissents, that year by year as the Permanent Settlement fades into the remote past, the presumption ceases more and more to correspond with the facts and probabilities of the day, and therefore that the presumption should run, if not from the 20 years before the passing of Act X of 1859, at least from 20 years before the passing of this Act. In other words, unless a person could show hereafter that his rent had been unchanged since 1864 he should not get the benefit of the presumption.

"This would have left the presumption operative in any case in which it could now be pleaded, but would not have allowed it to grow up by lapse of time in those cases in which it has not yet come to maturity.

"The majority of the Committee held that the presumption arising from the fact of a man holding for 20 years at an unchanged rent is in itself a wise provision of law without any reference to its dependence on the existence of the tenure or holding at the time of the Permanent Settlement, that it was in most cases easier for a zamíndár who may be expected to keep regular books to prove if rent had been changed, than for a raiyat who does not keep books to prove that it has not been changed, and that as the law had been in its present shape on the statute-book for a quarter of a century, it was inexpedient to alter it. I myself voted with the minority on that occasion, but I am not anxious to see the decision of the Committee disturbed.

Decision of Committee to maintain the existing law.

Increase of area.

"We have made some alterations in section 52, the first of which, as it only assimilates suits for diminution with suits for increase of rent on the ground of alteration of area, I need not notice; but in sub-section (2) we have inserted some provisions to guide the Courts in deciding whether an increase of area is really a ground for increase of rent or not. They will have to consider whether the apparent increase is the result of encroachment on the part of the raiyat, or of erroneous entries in the books of the landlord; whether, in short, the entire area has really been previously considered in the rent or not.

Instalments.

The provision regarding instalments (53) is new. It has been strongly represented to us that the custom of making the rent payable in twelve monthly instalments was frequently a source of great oppression to the raiyat, as it enables his landlord to harass him with an equal number of suits for arrears. On consideration we have deemed it inexpedient to interfere with custom in regard to instalments, but where no custom or contract exists we have provided for the payment being in four equal quarterly instalments; and have, in every case, directed (section 147) that suits for arrears shall not be brought more frequently than at intervals of three months.

"In paragraph 79 of the Statement of Objects and Reasons will be found an explanation of the provisions which the original Bill contained in regard to receipts and accounts. **Receipts and accounts.**

"The main alterations introduced by the Committee are the annexure as a schedule to the Bill of forms of receipts and accounts which the Local Government will be bound to keep on sale, but which landlords may use or not at their pleasure. The Local Government will have power to vary these forms from time to time.

"If landlords prefer to use another form, we only require that it shall contain substantially the information which the receipts in the approved form provide for, and the penalty attached to non-conformity is that such a receipt shall be *presumed*, till the contrary is proved, to be an acquittance in full. By the original Bill it was *deemed* to be so.

"We did not think any more arbitrary clauses required. The greater confidence which the Courts will naturally repose in receipts kept according to the standard plan will probably be a sufficient inducement to secure their gradual adoption.

"Section 60 is new, and its object is to give an advantage to the landlord whose title is registered against a claimant who is not registered in the Collector's books. **Receipt by registered proprietor.**

"The sections on deposits, though very carefully considered, have received but slight alteration at the hands of the Committee, and that only in matters of detail. Substantially the sub-chapter is the same as the provisions in the original Bill, explained in paragraphs 80 and 81 of the Statement of Objects and Reasons; but we have somewhat limited the discretion of the raiyat who deposits on the ground that he believes that his rent will not be received, by making this discretion dependent on the fact of the rent having been refused or a receipt withheld on a previous occasion. **Deposits.**

"In the sections dealing with the division or appraisement of the crop, where rent is paid in kind, we have made some alterations. **Produce-rents.**

"The original scheme is set forth in paragraphs 82 and 83 of the Statement of Objects and Reasons, as follows:—

'82. The provisions contained in sections 112 to 116, for the division or appraisement of a crop by a public officer in cases where the rent is paid in kind or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Behar by the Behar Committee and the Rent Law Commission; but they are made generally applicable, and their details are taken, for the most part, from enactments in force in Upper India, where rent is very commonly paid in kind or in appraisement of the crops. They enact that, if either party neglects to attend at the proper time for making the division or appraisement, or if there is a dispute regarding the division or appraisement, the Collector may, on application made to him, issue a commission to such person as he thinks fit, directing him to divide or appraise the crop, and may further direct him to associate with himself any other persons as assessors for this purpose. If, in a division made in this way, either party receives less than his proper share, he may, within three months from the date of the division, sue the other party to recover the value of the additional portion of the crop due to him, and, if he does not so sue, the division will be deemed to have been rightly made. When the case is one of appraisement, the commissioner is required to submi this appraisement in writing to the Collector, who shall, after such hearing and enquiry as he thinks necessary, pass an order either confirming or varying it, and that order will be final.' **Alterations made by Committee.**

"The principal alterations are these. We allow the Collector to interfere on the application of a magisterial officer, should his interference be deemed necessary to prevent a breach of the peace.

"We have allowed the Collector to decide the question before him and carry out his order, only leaving it discretionary with him to refer questions to the Civil Court. We have added a section defining the tenant's rights as to the possession of the crop, its cutting, threshing and storing. The double claim to possession has given rise to much doubt and to much oppression, and it is most desirable that the right should be clearly defined.

Chapter IX.—Miscellaneous Provisions as to Landlord and Tenant.

"In Chapter IX we have made some alterations in the portion relating to improvements.

"We have given the Collector power (section 78) to decide disputes as to whether the landlord or tenant should have a right to make an improvement, and whether a particular work is or is not an improvement.

Improvements.

"We have given the non-occupancy-raiyat the absolute right to make a well which in some parts of the country is essential to his cultivation. This right carries with it a right to receive compensation for it on ejectment.

"We have, in order to facilitate the decision of disputes regarding improvements, introduced a section (81), based on the law in force in the Central Provinces, providing that a landlord or tenant desiring to have any evidence recorded regarding an improvement which has been made may apply to a Revenue-officer to record it, and that the record so made shall be admissible in subsequent proceedings between the parties. We have also introduced a section (80) providing for the registration of improvements made by landlords. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, at a price to be fixed by the Court, any land on their estate required by them for the good of the estate, for building purposes, or for religious, educational or charitable objects. The Collector will have to certify to the sufficiency of the reason before the Court puts the section into operation.

Surrender.

"We have retained the old substantive law in regard to the raiyat's right to surrender, but we have added clauses to assist the Court in deciding under what circumstances he shall be liable for the rent of the following year in case a formal notice was not served three months before the surrender.

Abandonment.

"The object of section 87 (abandonment) is to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it is permanently abandoned or not. On the one hand, there is danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant; on the other hand, there is the danger of temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat.

"To meet these two dangers we provide that if a raiyat abandons his residence without notice and without arranging for his cultivation and payment of rent, the presumption is that he has abandoned his holding. The landlord can then, after filing a notice in the Collector's office, enter on the holding and let it to another tenant. We give, however, a term of two years in which the raiyat can sue for re-admission, and the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession, on such terms as to payment of compensation and arrears of rent as he thinks fit.

Protection of third parties.

"We have also added sections directed against collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided that the surrender of a holding which is subject to a registered encumbrance shall not be valid without the consent of the encumbrancer and the landlord, and in case of abandonment we have provided (section 87 (4)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord, or without risking the conversion of these sub-leases into permanent transfers.

Merger.

"The only other point in the chapter to which I need draw attention is that we have omitted section 141 of the original Bill, which dealt with the

merger of the tenant's interests generally in those of the landlord. The section as it stood was, we thought, open to objection, inasmuch as it allowed of the occupancy-right being retained in the hands of the landlord, his tenants being thus reduced to the position of under-raiyats; but we objected to it also from a more general point of view, as enabling individuals to introduce serious complications into the tenure of property without sufficient reason. All that remains on the subject will now be found at section 22, the effect of which, stated in general terms, is that when the occupancy-right in a holding falls into the landlord's hands it ceases to exist.

Chapter X.—Record of Rights and Settlement of Rents.

"Chapter X deals with the procedure for the record of rights and settlement of rents. As the Bill originally stood these two processes were separate and were provided for in separate chapters. The Revenue-officer undertaking a record of rights had no power to settle rents nor to decide disputes. He had only to record what he found to be the existing facts of each holding, and the entries in such a record were to be presumed to be correct till the contrary was proved. This process, however, was to be supplemented by another called the settlement of rents, and the object of the Government in providing for this latter process cannot be better shown than by an extract from the Statement of Objects and Reasons. It was said in paragraph 99 of that Statement:

Provisions in the original Bill.

'It has been stated, in the remarks above made on Chapter VI, that it is apprehended that, in many parts of the country, the framing of a table of rates will be impossible. It should be added that, in many instances, the mere framing of a table of rates will not suffice to settle the disputes between landlords and tenants. In either case the only satisfactory remedy may be a settlement of individual rents by a Revenue-officer, conducted somewhat in the same manner as in a Government estate at present; and it is with a view to providing such a remedy that Chapter XI has been framed.

'There is, however, one cardinal difference between the provisions of this chapter and those of the existing settlement law which should be noted at the outset. Under the existing settlement law, when a Settlement-officer has, after the most careful and protracted inquiry, settled the rents of an estate, and his proceedings have been scrutinized and checked by the superior Revenue-authorities, every individual rent fixed by him is liable to be called in question in the Civil Courts, and that not merely on the ground of error in respect of some matter, such as the status of a tenant or the validity of an alleged lease, falling most appropriately within the cognizance of a Civil Court, but also on the ground of an error in regard to the quality of the soil, the estimated amount of the produce, or some other such matter with which the Revenue-authorities, conducting their inquiries on a great scale, are far more competent to deal than any Civil Court trying a suit relating to a single holding can possibly be; in other words an important portion of the work, after being done by those authorities who are most competent to perform it is liable to be pulled to pieces by another set of authorities, who are far less competent to perform it. The enormous amount of unnecessary expense, trouble, and vexation, which this system entails on all concerned can be estimated from the fact, stated by the Board of Revenue in referring to a recent settlement, that out of 2,391 decisions in suits brought to contest the Settlement-officer's rates, 2,202 were absolutely adverse to the plaintiffs. An attempt has been made to avoid this in Chapter XI of the Bill by distinguishing, among the various questions which may arise in a settlement of rents, those which the Revenue-authorities are most competent to determine and those which a Civil Court is most competent to determine, making the decision of the Revenue-authorities final on the former, and providing that the latter may ultimately be brought for decision before the Civil Court.

'The procedure of this chapter, besides being available for the purpose of Government settlements, may be made applicable by the Local Government—

'(*a*) when a large proportion of the tenants or of the landlords desires that it should be applied, and

'(*b*) when a resort to it is likely to settle or avert a serious dispute, existing or likely to arise, between landlords and tenants generally.

'It is applicable to tenants of any class, but would probably be made use of chiefly for settling the rents of occupancy-tenants.

'When the rents to be settled are rents which are subject to alteration by order of a Court, they will be *fixed* according to the principles embodied in the Bill, and so that they shall not exceed the maximum prescribed by the Bill in cases of enhancement. When, on the contrary, the rents are not of this description, they will be merely ascertained and recorded as rents are under Regulation VII of 1822.

'The Revenue-officer, having settled the rents, will prepare a jamabandi, showing the status of each tenant, the land held by him, the name of his landlord, whether the rent has

been fixed or ascertained and the amount of the rent fixed or ascertained. This jamabandi will be published, and, after an opportunity for urging objections against it has been allowed, will be submitted to the higher Revenue-authorities with the objections and a report setting forth the grounds on which the Revenue-officer has proceeded. If ultimately sanctioned by the Local Government, it will be again published, and will then continue in force for 10 years.

'While it remains in force it will be conclusive (except as will be presently explained) as to the rents payable by those tenants whose rents are shown in it as fixed. As regards rents shown in it merely as ascertained, and as regards all other matters contained in it, it will be merely presumed to be correct until the contrary is proved.

'It will be observed that, in thus empowering a Revenue-officer to fix rents so as to bind the parties, we necessarily empower him to decide certain questions (as, *e.g.*, that of the status of a tenant) which more properly appertain to the jurisdiction of the Civil Courts and ought not to be finally decided by any other authority. It is not, however, intended that the Revenue-officer should finally decide such questions. He may, if he thinks fit, when such a question arises, abstain altogether from deciding it, and, under section 155, refer it to a Civil Court, or leave it to be raised before a Civil Court in a suit instituted by any party interested.

'It only remains to add that, by section 168, the Local Government is empowered to charge the expenses of all proceedings, other than Government settlements, under this chapter to the landlords and tenants concerned, in such shares as it thinks fit.'

"Under the scheme, therefore, as sketched out in the original Bill, it will be observed (1) that the Revenue-officer, in recording rights, could not decide any disputes which might arise, and consequently his record could be of very little value; (2) that the Settlement-officer, though he could decide whatever disputes come before him, could only deal in a preliminary sort of way with a large class of disputes, which might afterwards be tried out by a regular suit in a Civil Court; (3) that though no settlement can in the nature of things be undertaken without the previous preparation of a record of rights, the two processes were unconnected in the Bill, and were treated as essentially separate and distinct.

Alterations made by Select Committee.

"I need not take you through the successive steps by which the procedure was altered, first in the Bill No. II of last year, a description of which will be found in paragraphs 71 to 77 of our Preliminary Report, and then in the Bill of this year as explained in paragraph 42 of our Final Report. It will be sufficient if I explain to you the final result of our discussions as embodied in the Bill now before you.

Two processes amalgamated.

First, then, we have amalgamated the two processes. It was obvious that on a Revenue-officer beginning to record rights he would find himself face to face with numerous cases in which, on one side or the other, the status of the raiyat, the area of the holding, the amount of the rent payable, were the subject of dispute.

Reasons for the change.

Unless he could deal with these disputes his record would be of little value, and it was obviously absurd to empower one officer to settle questions of status and area and then to send in another to settle questions of rent.

"It seemed equally unreasonable to empower a Revenue-officer, with all the parties and witnesses before him, to decide disputes and then to allow the whole matter to be re-opened *de novo* and fought out from the very beginning in a Civil Court. At the same time we wished in no way to diminish the security which parties now have in the decision of their cases by the most competent Courts and in the right of appeal to the highest Court in the country.

Powers of Revenue-officer.

"What we have done then has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court.

Special Judges and High Court to hear appeals.

His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be, on the ground

that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be.

"The decision of the Revenue-officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years.

Landlords empowered to apply for settlement.

"In section 103 we have given a special power to landlords to have this procedure applied, on depositing the expenses, to individual estates, and we apprehend that in the cases of auction-purchasers who are met by a combination of their tenants and are unable to get at the papers of their predecessor, this power will be found very useful.

"In sections 105 and 106 we have made ample provision for the publication of the record and for hearing objections, so as to eliminate the danger of any one being prejudiced by entries made behind his back.

Ordinary settlements.

"All this applies to ordinary settlements which may be undertaken either by direction of the Government of India, or by order of the Local Government on the application of the parties, or in the case of serious disputes, in Court of Wards or Government estates or where an estate is under settlement. In fact, this procedure is the only procedure which will now be at the disposal of Government for the purposes of a revenue settlement. But this procedure allows of no alteration of rent except on the application of the individual landlord or individual tenant, and allows of no reduction of rents, except on the two or three grounds, such as diminished area and diminished prices, which can be pleaded as grounds of reduction in a Civil Court. We have, however, provided for a special settlement to meet special circumstances. Under the special settlement (section 112), the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable, and all such rents as he settles will hold good for the same term of years as if fixed under a judicial decree. But this procedure, which gives unusual powers of interference, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, requires some strict safeguard. We have therefore provided that it shall only be applied after the previous sanction of the Governor General in Council has been obtained. It is an extreme power intended to take the place of Sir R. Temple's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period.

Special settlements.

To be undertaken only with the previous sanction of the Government of India.

Divergent views as to the Settlement Chapter.

"I have dealt with this chapter at some length, because I think it is one of the most important in the Bill. The zamíndárs naturally object to it, because its operation tends, by the process of registering the rights of the raiyat, to lessen their own power of dealing with him at their pleasure, while the Bengal Government seem to look upon it as the one oasis which stands out, in the sterile wilderness of the Bill, rich with potentialities of rest and refreshment to the weary raiyat.

My own opinion.

"I am not sure myself that the raiyats will welcome the light of day in regard to their holdings more than the zamíndárs will welcome it in regard to their rents, but I am sure that the operation of this chapter, if wisely and discreetly carried out, will ultimately tend to give greater stability to all rights in the land, to reduce litigation hereafter, to give the Government the benefit of that real knowledge of facts in regard to the relation of landlord and tenant which they now have to pick up piecemeal through the records of the Courts and the registration officers, and the deficiency of which they so much lament, and that it will prove, as we are informed the similar record has proved in the permanently-settled districts of the North-Western Provinces, 'the saving of the raiyat'.

Tables of rates.

Abandoned.

"The next subject with which I ought to deal is that of the table of rates; but in our present Bill this chapter is like the more famous one on the snakes in Iceland. There is no longer a chapter on the table of rates. I have explained to you how special experiments have shown that only in very exceptional tracts were rates to be found so uniform as to offer any hope of the procedure being satisfactorily worked; and as a more effectual method of arriving at the same end has been provided in the settlement chapter, we have decided, with the consent of the Local Government, to apply the happy despatch to this portion of the Bill.

Khamar or private land.

"We have made some alterations in the provisions regarding *khamar* or *zirát* land.

Meaning of the word.

"A reference to paragraphs 18 and 19 of the Statement of Objects and Reasons will show the intentions of Government in respect to surveying and recording *khamar* land. It must be explained that the word *khamar*, and the other words used in the Bill, have a great variety of significations, but in this Bill, as in Act X of 1859, the only distinction we wish to draw, or are in any way concerned with, is between that private land of the zamindars in which occupancy-rights do not accrue, and land which is not the zamindar's private land in which they do accrue. It was to meet a very real evil, *viz.*, the tendency to absorb into the landlord's private land large areas of land in which raiyati rights had grown up—an evil of the existence of which in Behar there is ample evidence—that Government took power in the Bill to record and mark off for the future in specified local areas all such land as is no longer open for the acquisition of occupancy-rights. The injury of the past could not be undone, but in a part of the province where the wholly agricultural population is not less than 800 to the square mile, it is obviously right to prevent any further encroachments in the future to the stock of raiyati land. We have supplemented the provisions of the original Bill by a section which allows a landlord at any time to get his private land recorded, so as to obviate the difficulty which might occur if he has to bring evidence of a past state of facts on a survey being ordered at some distant date, and we have given the tenant a converse power.

Object of the provisions.

Instructions to guide the Revenue-officer or Courts.

"We have also given specific instructions that the Revenue-officer should record as private land all land which has been cultivated as such by the landlord for 12 years previous to the passing of the Act, and all cultivated land that he finds to be recognized as such by village-custom. In regard to other land, where local custom is insufficient to guide him, he shall look to whether the land has been leased specifically as private land in past years; but otherwise the general presumption shall be that land is not the proprietor's private land.

Distraint.

"Coming now to the chapter of distraint, we have maintained the principle that distraint shall not ordinarily be left to be carried out by the zamíndár's servants without the supervision of the Courts. We have by requiring it to be made on 'application' instead of on 'suit' materially reduced the expense. We have given facilities for an early application being made, and have empowered the Courts to issue in such cases an order prohibiting the removal of the produce pending the final order.

"We have also provided that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may, by order, authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The High Court is empowered to make rules regulating this procedure.

Chapter XIII.—Judicial Procedure.

"The alterations made in the existing procedure in rent-suits by the Bill as first introduced were explained in paragraphs 114 to 116 of the Statement of Objects and Reasons.

"That Statement then went on to say—

Explanation in Statement of Objects and Reasons.

'It is hoped that, when the measure comes to be fully discussed, other expedients for simplifying the procedure in rent-suits may be discovered, but, with the exception of those above referred to, none have hitherto been suggested which the Government of India would be prepared to accept. As regards the possibility of devising any effectual procedure analogous to that on negotiable instruments under Chapter XXXIX of the Code of Civil Procedure, or any other form of summary or provisional remedy, the whole history of such remedies both in this country and elsewhere is against it.

'A summary form of procedure can scarcely help a plaintiff unless his case is of the simplest description, admitting of being answered only in the simplest way, and he comes into court armed with documentary evidence of so reliable a character that the presumption against any defence being possible is extremely strong. In such cases the Court may very properly, and with great advantage to the plaintiff, be empowered to decline to hear the defendant and to decide against him summarily and provisionally, unless he pays the amount of the claim into Court or gives security for it. But what advantage could be hoped for from a procedure of this description in rent-suits in Bengal, which admit of the most varied and complicated defences, in which the evidence on both sides is usually of the most worthless character, and charges of forgery and perjury almost common forms in the pleadings? If the legislature consented to provide such a procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and complicated as an ordinary suit, with the further disadvantage of not being final.

'The truth would seem to be that facilities for recovering rents in Bengal should be sought for not so much in novel forms of procedure as in a reliable record of tenancies and their incidents and a simple mode of adjusting rents; in other words, by going to the root of the disputes which, though they may not always come to the surface, are believed to underlie a very large proportion of the contested rent-suits.'

"The Select Committee gave their most earnest consideration to the question of further simplifying the procedure, but without much success.

"In our intermediate report we explained what we had been able to do, which was as follows:—

Changes made by Select Committee in their Intermediate Report.

'We have excluded suits for penalties and suits for the recovery of possession of land from the special procedure prescribed in sections 191-197 of the original Bill.

'We have introduced at the opening of this chapter a section (159), modelled on a section in the Presidency-towns Small Cause Courts Act, empowering the High Court, with the approval of the Local Government, to make rules declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant, or shall apply subject to modifications. We trust that as experience is acquired of the working of the Courts under the new Act it may be found possible to exercise this power so as to effect further simplifications in procedure.

'For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

'We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent-suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent-suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

'We have further added a section (165) providing that when a defendant in a rent-suit admits that money is due from him to the plaintiff but disputes the amount, the Court shall, as a rule, require him to pay the amount admitted into Court.

'We have provided (section 173) that when a plaintiff institutes a suit for the ejectment of a trespasser he may claim, as alternative relief, that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court.

'Section 207 of the original Bill provided that a landlord or a tenant might institute a suit for the determination of the nature and incidents of the tenancy. We have (section 174) substituted the simpler and cheaper procedure of an application, and have empowered the Court, to which the application is made, to direct that a Revenue-officer shall make a local enquiry into any matter it thinks fit.'

Questions referred to the High Court.

"In addition we referred two questions specially to the High Court—

'What modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure, with a view to expedite the trial of rent-suits; and in particular whether it is desirable that landlords should be empowered to institute, by means of a single plaint, suits for arrears against a number of raiyats holding independently of each other.

'Whether any provision can safely be enacted restricting the right to claim a re-trial when a decree has been given *ex parte*. We are aware that a Judge is in no way bound to admit a re-trial unless he is satisfied that the summons failed to reach the defendant or that he was prevented by some sufficient cause from appearing; but the representations made to us are to the effect that the due service of the summons is systematically denied, and that the Courts too readily accept the plea, thus encouraging tactics the only object of which is to interpose delay and to involve the landlord in unnecessary expense in recovering his dues.'

Reply of the Judges.

"These questions were considered and answered by the Hon'ble Judges of the Court in their collective capacity. Their answers were to the effect that the modifications already introduced were unobjectionable, but that no modifications other than those 'could be made in the ordinary law applicable to civil suits, without opening the door to evils which would outweigh the advantages to be derived from increased expedition.'

'The suggestion,' they said, 'made in the Report of the Select Committee that suits for arrears of rent should be brought by means of a single plaint against a number of raiyats holding independently of each other would, the Judges believe, be impracticable and lead to delay, worse, in all probability, than those now experienced. The Judges have carefully considered the question whether, leaving the law unaltered, any changes could be made in the executive orders issued to subordinate judicial officers with a view to expedite the decision of rent-suits. The orders at present in force seem to provide almost all that is necessary to ecure the postponement of other suits to rent-suits and the prompt decision of all rent-suits which are not contested. The Court proposes, however, to direct that in future undefended rent-suits shall have priority over short suits, though both alike shall, as far as possible, be taken up on the date fixed.

'It would, the Judges believe, be extremely dangerous to enact any such provision as that proposed in clause (*b*) of paragraph (2), to restrict the right to claim a re-trial where a decree has been given *ex parte*, and on this point they agree entirely with the Select Committee. It is true, as has been represented to the Committee, that landlords are frequently involved in unnecessary expense and delay by the tactics of their raiyats who deny service of summons, but it seems absolutely essential, in order to prevent fraud by dishonest agents of landlords in collusion with the process-servers, that raiyats against whom decrees are passed *ex parte* should have an opportunity for applying for a re-hearing.

'The third suggestion is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. This proposal, which might, no doubt, serve to obviate some of the inconvenience, expense and delay now caused to zamindars by recalcitrant raiyats, would, however, it is believed, in many cases involve the defendants in very serious hardship. The Court is not, therefore, disposed to recommend its adoption. It may be observed further that it is always open to a zamindar to execute his decree notwithstanding that it is under appeal, in which case, if execution is stayed, the law provides that security shall be given for the due performance of the order that may ultimately be passed.

'The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would therefore have been a matter of satisfaction to them had they been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zemindars. It is, however, scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.'

Remedies proposed by the Judges.

"The Judges go on to point out that the only remedies for expense and delay are to be found in the lowering of fees and in the multiplication of Courts. On these points I am not in a position to say anything here, save

that, while I have no doubt that the latter question will be fully considered by His Honour the Lieutenant-Governor, the former, in connection with the scale of court-fees generally, is now under the consideration of the Government of India. Further proposals made by Babu Mohini Mohun Roy with the object of shortening the procedure have since been considered by us. They were referred to a number of experienced judicial officers, but were not favourably received. It seems quite clear that no remedy is to be found either by summary procedure, by making returns of service conclusive evidence of actual service of process, by restrictions on the right of re-trial, or by any similar method. Rent-suits are tedious and expensive, because the issues to be tried are often intricate, and because facts are hard to be got at. With rights and rents recorded, with receipts and accounts properly kept, and above all with trustworthy agents, the zamíndárs would find many of these difficulties vanish. But if there is a real dispute a summary trial will not help. It only means that the real trial of the question at issue is postponed and there are two processes instead of one. I am afraid the Judges touched the heart of the matter when they said: 'It is scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.' I have dealt at some length on this subject and been careful to give the opinion of the High Court, because it is made a ground of reproach to us that we have not given any more summary method of recovering rents. I regret that we have not been able to go further. We have rejected no suggestion having any element of success in it without first obtaining the concurrence of the most competent judicial officers, and we have in addition to those abbreviations already mentioned added some more in the chapter about sales for arrears which I hope will prove useful.

Suggestions by Babu Mohini Mohun Roy.

"The general scheme of the Sale chapter was very fully explained in paragraphs 124-132 of the Statement of Objects and Reasons, and as we have not departed from the general scheme I will not go over the whole ground again, but merely explain the slight modifications of detail which we have ventured to introduce. We have included among 'protected' interests, that is to say those which cannot be voided by the purchaser, the right of a non-occupancy-raiyat to hold for five years at the rent fixed by a Court.

Sales for arrears.

"We have removed the limitation which restricted the decree-holder's right to get arrear-rents out of the purchase-money to such rent only as might be due for six months after the date of decree. It is not in the interest of either party to penalise the landlord's forbearance in abstaining from executing his decree.

"We have, in order to shorten proceedings, inserted in section 163 a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

"We have, at the suggestion of our hon'ble colleague, Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. on the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold; and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

New section for repurchase of holding on payment of arrears and interest.

"Having decided that no alteration should be made by this Bill in the existing law relating to the incidents of the patni tenure, we have consequently excluded those sections which dealt with the sale procedure applicable to those

Patni sales.

and similar tenures. It will be for the Government of Bengal to deal with the question of making this procedure applicable to the summary sale of other tenures which may be registered under the Bill now before the Lieutenant-Governor's Council.

Contract sections.

"I have a few remarks to make on Chapter XV, which brings together in one focus all the provisions we think it necessary to make in limitation of contract. The necessity of interfering with freedom of contract was fully discussed at the second reading of the Bill, and was then affirmed by the Council. I shall not therefore further discuss this question. I shall only deal with our alterations, and, first, I would point out that, instead of making our restrictions equally applicable to all contracts whenever made, we have divided these limtiations into three classes, the first one referring to all contracts whether past or future, the second to quite recent contracts, the third to future contracts only. In the first class are placed only those contracts which purport to bar in perpetuity the accrual of occupancy-rights, to destroy occupancy-rights already in existence, to allow ejectment without process of law, to prohibit improvements. The second class deals with contracts, purporting to bar the accrual of occupancy-rights during a particular tenancy, and in this class we have decided not to go behind the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts of this nature made subsequent to that date have been made in order to defeat impending legislation, and we think they should not be given effect to. In the third class, which only restricts future contracts, we have simply put in legal form the general statement that neither the accrual of the occupancy-right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease.

Division into three classes.
First class.
Second class.
Third class.

Reclamation leases.

"We have left reclamation leases wholly to contract, save that we do not allow them to operate so as to destroy an occupancy-right which has grown up during the lease.

Chur and utbundi.

"We have put *chur* lands and *utbundi* lands on a special footing, which is practically the same as that of the ordinary raiyat under Act X of 1859. No occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever amount may be agreed upon between him and his landlord. We have omitted the chapter in the original Bill relating to *bastu* or homestead lands, and have brought all our legislation on this point into one brief section, to the effect that homestead land when not held as part of the holding shall be dealt with according to local usage; and when local usage cannot be ascertained, then it shall be treated as if it were ordinary raiyati land. The varieties of local usage were so many and of such importance that any regulations which could have been framed must have done harm and have been found inapplicable in many places.

Bastu.

Supplemental Chapter.

"There are two alterations only in the Supplemental chapter which need be noticed. One is that when a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

"The other provides that 'this Act shall be read subject to any Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.' In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

Bill finished. Further remarks.

"I have now gone through all the more important changes which have been made in the Bill since it came into the hands of the Select Committee, and have endeavoured to put you in full possession of the considerations by which we have been influenced. In performing this task I am well aware of the intolerable tediousness I must have inflicted on you, but I must still ask your

patience for a little time while I offer some remarks as to the value which should be attached to the two opposing lines on which the minutes of dissenting members proceed, and the real amount of protection given to the raiyat by the labours of the Select Committee.

Three classes of dissents.

"Turning now to the dissents, we find that they may be broadly divided into three classes: (1) those which object only to a few specific provisions of the Bill; (2) those which, accepting the Bill as a whole, express dissatisfaction at the insufficiency of the protection given to the raiyat; (3) those which object to the whole scope of the Bill as injurious to the interests of the zamindar.

Specific proposals.

"It is not my purpose here to deal with objections to specific clauses of the Bill. The more important have been noticed already; the less important can best be reserved till the specific amendments on them are brought before the Council.

Insufficient protection to raiyat.

"I wish, however, to say, a few words on those objections which are directed against the general scope of the Bill. It was not to be expected that a Bill of such importance and complexity as this—a Bill which has to deal with absolutely conflicting interests, which purports to set a limit on the power of one class to absorb the fruits of the industry of another class, and which has to regulate their relations in regard to the two leading interests of property and power—it was not to be expected that such a Bill could meet with universal acceptance or could fail to give cause of offence to those who on either side take extreme views. There are some who, if their views were carefully analysed, would see in the raiyat nothing but a serf, who look upon his rights as only interests carved out of the landlord's absolute property in the soil, and as being therefore entirely dependant on the landlord's will and pleasure. There are others who look upon the raiyat as having the true property in the soil, and the landlord only as the tax-collector for the State, as one therefore who should have no more part in settling what that tax is to be or from whom it should be taken than a collector of any other State assessment. Between these two extreme points there are many halting-places, and the dissents show that, while some of our members would have guided us some way towards the latter point, others would have had us adopt the high landlord view of the position and look mainly if not solely to his interests. The dissents are naturally coloured by the dominant idea in the mind of either party, and will, I think, to some extent have the effect of neutralising each other in the public mind. What I would ask the Council to consider is, whether it is true that in the words of one party we have 'signally failed to afford the occupancy-raiyat reasonable protection,' and as regards the non-occupancy-raiyat 'have neither given protection as regards his rent nor facilitated his acquisition of the right of occupancy'—whether it is true, in the words of the other party, that the 'measure is opposed to the just rights of the proprietors of the land and detrimental to the best interests of the country.'

Position of the occupancy-raiyat.

"Let us compare briefly the position of the raiyat under the old law and under the Bill as it stands.

Under the existing law.

"Under the existing law the position of the occupancy-raiyat may be thus described. In the first place, he has a great difficulty in making good his title to occupancy-rights. He must prove that he has held every particular field of his holding for 12 consecutive years, and in the absence of trustworthy village-records the proof is often impossible. He and his forefathers may have resided in the village for generations, but evidence of this is entirely immaterial to the issue. He may be able to show that he has held *some* land in the village in every year of the last 12, but if the fields have been changed his claim to the occupancy-right cannot be maintained. *Secondly*, the law, not content with making the proof of occupancy-rights very difficult to the raiyat, allows him to contract himself out of them, and these engagements, entered into without understanding and forced on the raiyat without adequate consideration, are rapidly becoming a common form. *Thirdly*, the law gives the occupancy-raiyat no protection from incessant enhancement. It enumerates, it is true, the grounds on which enhancements may be sought, but it does not prescribe the

term for which a rent after enhancement is to hold good, and it does not prevent a landlord from instituting annual enhancement-suits, or from annually serving the raiyat with a demand for an enhanced rent. *Fourthly*, the law does not define the raiyat's right to make improvements, even of the most ordinary and necessary character, nor does it determine his rights in them in the event of his being ejected. *Fifthly*, the law makes every instalment an arrear of rent that is not paid on the exact date fixed in the raiyat's engagement or by custom, and allows a landlord to institute a separate suit for each instalment in arrear. As the custom of monthly instalments is common, the harassment which a landlord may thus inflict on his raiyat is intolerable. *Sixthly*, the law makes the raiyat liable to be ejected in execution of a decree for an arrear of rent, even though the sale of his occupancy-right by auction would more than satisfy the debt. Thus he loses, and the landlord acquires, not only the value of his interest in the land, but also of any improvements he may have made, and of any crops which may be still on the ground. *Seventhly*, the law of distraint is such that under cover of it landlords are able, if so disposed, to exercise a ruinous interference with the raiyat's disposition of his crops and reduce him to beggary.

and under the Bill.

"To turn to the corresponding provisions of the Bill. *First*, the Bill, by returning to the old principle of the khudkhast raiyat, gives him his occupancy-right not only in the actual lands held for 12 years, but in any land held by him in the village, and it meets the great blot of the old law by facilitating his proof of these rights. He has merely to show that he has held *some* land continuously within the village boundaries for 12 years, and he becomes a settled raiyat of his village. It is presumed in his favour, in any proceeding between himself and his landlord, that in the absence of proof to the contrary he is an occupancy-raiyat of the land which he is found to be holding. This presumption, which cannot operate unjustly to the zamindar, is very rightly thought to be of immense value to the raiyat.

"*Secondly*, the Bill prevents the occupancy-raiyat from contracting himself out of his status.

"*Thirdly*, the Bill puts an effectual check on incessant enhancements. Whether the raiyat's rent be determined by a Court or by private agreement, in either case the Bill says that it shall not be again enhanced for fifteen years. The Bill also puts a strict limit to the amount of enhancement by agreement, and that this protection is considered of real value by the dissentients is shown by the importance they have attached to it. The changes made in the grounds of enhancement in Court have already been discussed. The only change that is in any way likely to prove prejudicial to the raiyat is the enhancement on the ground of a rise in prices, and that not because it is unfair, but because it is workable, while the old law was admittedly impracticable. Even this concession the landlords profess to regard as 'visionary'.

"*Fourthly*, the Bill secures to the occupancy-raiyat power to make improvements and enables him to recover his outlay in case of eviction.

"*Fifthly*, in the matter of rent instalments, the Bill, while leaving the number and dates of instalments to agreement or local usage, provides that an interval of at least three months shall intervene between the institution of successive suits for arrears of rent.

"*Sixthly*, the Bill abolishes ejectment in execution of a decree for an arrear of rent against an occupancy-raiyat, and requires the decree-holder to bring the tenancy to sale.

"*Seventhly*, the Bill has effectually weakened the power of the landlord to use the process of distraint for purposes of simple oppression, though it remains a valuable instrument for the recovery of arrears.

"I say confidently that on all these points the Bill is an improvement on the old law, and, without any injustice to the landlord, fulfils the object of the Government, which was 'to give reasonable security to the tenant in the occupation and enjoyment of his land.'

"To pass now to the non-occupancy-raiyat. I have already, with reference to Chapter VI, gone so fully into a comparison of his position under the Bill with that under the old law, that I need not take you over the ground again; but admitting that a certain amount of peril lies in the power of a landlord to eject him at the expiry of his initial lease when he is first admitted under a registered lease, and when the landlord sues within six months of its expiry, I would ask you to look at the effect of our provisions as a whole. The raiyat can, under the above circumstances, be ejected, but otherwise he cannot be. If the landlord wishes to enhance his rent, he can only do so by a registered agreement or by suit in Court. The raiyat is not to be ejected for refusing an enhancement, but the Court will fix a fair rent and he can hold on at this rent for five years. He cannot contract himself out of the right to acquire occupancy-rights. The Bill allows the period during which he holds under a lease and the period during which he holds at a judicially fixed rent to count towards the accrual of occupancy-rights; and yet we are told that all these things are vain. Neither in the necessity of registering initial agreements and agreements of enhancement, nor in the right to sit on unless ejected by suit within six months of the expiry of the initial lease, nor in the right to a judicially fixed rent with its period of five years, neither in any of these things nor in all of them put together is any protection afforded to the non-occupancy-raiyat nor is anything done to facilitate his acquisition of the right of occupancy. I leave it to you, gentlemen, to decide what weight should be attributed to accusations such as these.

The non-occupancy-raiyat.

"Coming now to the objections taken by the landlords, it is more difficult to formulate these, for they deal apparently with more than half the sections of the Bill and must be considered with reference rather to specific clauses than with the general scope of the Bill. The general accusation which I have quoted would seem to have been intended to refer to a Bill which still enforced the transferability of occupancy-rights, the extension of that right to the estate as well as to the village, the gross produce limit, the limitations on initial rents, the fractional limitations on enhancement in Court, the avoidance of all past contracts not in accordance with the Bill. I find no allusion made anywhere to the fact of these provisions having been struck out. I find no allusion to the simplification of the method of enhancement on the ground of rise in prices except that what Mr. Reynolds speaks of as a provision that 'puts enormous powers of enhancement into the hands of the landlord' is sneered at by Bábú Peári Mohan Mukerji as more visionary than real. I can only say that we have endeavoured, and I think have succeeded in our endeavour, to give great facilities for moderate enhancement, and have striven, as far as was possible without injuring the rights of others, 'to give reasonable facilities to the landlord for the settlement and recovery of his rent.' The Council will, I think, easily understand from the general scope of my remarks and from the resistance we have offered to many proposals supported by all the ability and all the authority of the Bengal Government, that we have not lost sight of the just interests of the landlord, and I hope to be able to prove this with regard to the long series of amendments which it is proposed to move on specific sections. There is one complaint made by the representatives of the zamindars, and in a modified form by Mr. Hunter, on which I should like to say a few words. The complaint is that the Committee did not examine witnesses personally. Mr. Hunter sees very clearly that it was not possible for the Select Committee to do this, but regrets that the Rent Commission did not adopt the method—a method which, in enquiries of quite another scope, and, indeed, recently under the hon'ble gentleman's own auspices, has worked most successfully. Well! I am not acquainted with the reasons which induced the Rent Committee to forego this method. My own connexion with the Bill, and my official knowledge of the discussion, indeed, date from a much later time, only from the receipt of the Secretary of State's despatch sanctioning legislation; but I can quite understand that the Rent Commission did not act without good reason. Those who can recollect the agitation caused by the Indigo Commission of a quarter of a century ago may well have thought it dangerous to start an agitation on the infinitely more important question of rent by a peripatetic Commission of Enquiry. They

Landlords' objections.

Personal examination of witnesses.

Probable reasons of the Rent Commission for foregoing this method.

may well have thought that more light would be thrown upon the problem by the opinions and knowledge of the judicial and executive officers, whose business it is to enquire daily into the relations of individual landlords and tenants, than by collecting evidence which, on the side of the rich and powerful, would be forthcoming in abundance, and would be put before them with all possible skill and ability, while on the part of the poorer and humbler side it would be no one's business to collect it, nor could it, in the shape of personal knowledge, be got at save with infinite trouble and at some peril to the witness.

Such a course not open to the Select Committee.

"These and other similar considerations may have led them to prefer the method they adopted to that of a Commission going about to take evidence. I am not concerned to discuss the question whether they were right or wrong, for there is very much to be said on the other side; it is sufficient to point out that, when the legislature had once decided the general lines on which we were to proceed, it was no longer open to the Select Committee to adopt this method. Such a course is neither usual nor desirable. In fact the whole constitution of Select Committees of this Council renders it impracticable for them to go about the country collecting evidence. In what we did, however, we adopted, I think, an equally efficacious method. We have, during the past two years, submitted every section of the Bill twice over to the most thorough sifting at the hands not only of persons interested, but of experienced and impartial officers, judicial and executive, and to Committees which could test the experience and opinions of one officer by confronting them with the experience and opinions of another officer; and if the result has been a great variety of opinions, it is not merely because human nature is so constituted that opinions must differ on questions involving most important and antagonistic interests—questions in which the everlasting debate between old and new, between those who have and those who have not, must come to the front, but also because the facts themselves differ so widely; the facts of one estate are not the facts of another estate; the facts of one part of the country are not the facts of another part of the country. It is one of the misfortunes of legislation that in this country as well as in others, but more in this country perhaps than elsewhere, we have to make our laws applicable to a number of heterogeneous units of area and population, united together only by one common Government. We have to legislate in the interest of the average, and to neglect what is local and exceptional. This leads no doubt to difficulties. We have to insert some provisions which, in parts of the country, are not wanted; we have to omit other provisions which, in some parts of the country, are certainly desirable. Accepting this as the necessity of our position, not only have we endeavoured to get the fullest measure of light and knowledge to bear on our deliberations, we have also endeavoured to guide ourselves by that light and knowledge. We have given time—ample, abundant and overflowing—for the elaboration of criticisms, and for the collection of opinions, and the criticisms and opinions so collected and elaborated have been carefully and laboriously digested. The amount of literature that has gathered round this subject is such that no one except under the sternest sense of duty could possibly read, much less assimilate, it, and it really leaves nothing new to be said on any point in this wilderness of controversy.

Method adopted by the Committee.

Reason of great variety of opinions.

Difficulty of legislating for the whole of Bengal.

"The Bill was before the public in one shape or another for three years before it was introduced into this Council, and during the two years it has been before the Select Committee every section has been discussed and re-discussed from every possible point of view. I can safely say that never has a Bill been introduced into this Council which has had so much thought and consideration expended upon it by the outside public. There is really a ghastly irony in the accusation that we are now giving no time for consideration and are asking you to pass the Bill with undue and indecent haste; I am unwilling to look upon such an accusation as made in a malicious spirit, but it is really difficult to suppose that any one can attach serious credence to it. I can understand the advocates of the zamindars wishing to drop the Bill altogether. I can understand, though I cannot sympathise with, those advocates of the raiyats who would see this Bill abandoned in the hope that this may necessitate a more drastic

measure being passed hereafter; but what I do not understand is, how any one, who regards public and not personal interests, can wish that a growing agitation should be inflamed, and that dangerous passions should be further exaggerated, by a renewed and useless discussion of matters which further discussion cannot possibly further illumine. Yet this is, I understand, the recommendation made by the representatives of the zamindars. In fact, what I am now saying is really addressed to what is practically the first disputed question for the Council to decide. You have to consider whether this Bill should be re-published with a view to a fresh collection of opinions, involving a fresh consideration by the Select Committee, and the hanging up of the whole subject for another year, when precisely the same tactics would be repeated. I would answer that there must be some point of finality in all this discussion. The whole scope of the work of the Select Committee, since the Bill was last re-published, has been to prune excrescences and to cut away novelties. Our alterations during this session have not been such as to insert any novel provisions of serious importance into the Bill, nor such as to offer material for discussion outside the well-worn lines. We have ample evidence from various parts of the country—from Mymensingh in the east to Behar in the west, from Rungpore in the north to Orissa in the south—that the agitation on this subject cannot safely be prolonged, and that whatever is done in regard to the Bill should be done finally and at once. I believe I shall have the support of His Honour the Lieutenant-Governor in saying that it would, in his opinion, be seriously injurious to the interests of the province if legislation is now postponed, and I have no hesitation therefore in asking you to reject the amendment that the Bill should be re-published, and to decide on proceeding at once with the consideration of our Report and of those amendments of which notice has been given."

The Hon'ble MR. QUINTON said:—"The impressive words with which my hon'ble friend Sir Steuart Bayley has just concluded his speech may, I think, notwithstanding the plea for delay put forward by my hon'ble friend Bábú Peári Mohan Mukerji in the first amendment standing in his name, justify us in congratulating ourselves on at last approaching the end of this long controversy, and on reaching the final stages of the Bill, which has been under the consideration of the Select Committee for the past two years.

"My hon'ble friend Sir Steuart Bayley has, on the part of the Government of India, acknowledged our services in generous terms, and whatever may prove to be the value of those services I am sure that not one of us failed to appreciate the gravity of the work on which we were engaged, and the momentous results that must follow on our recommendations; for the task which this Council has undertaken, and on which we were required to advise it, namely, the revision and amendment of the Statute law respecting the rights and interests of landlords and tenants in Bengal, is certainly second in importance to no measure which has come before it during the present generation. That law affects vitally the interests, the well-being, even the very means of subsistence, of a population of 60 millions of people, for the bulk of whom agriculture furnishes the sole means of support. With such a law, when it works well on the whole, no wise Government would interfere; but when it has been found mischievous in its operation, when it has been left behind by the progress of the agricultural classes, or has ceased to be applicable owing to altered economic conditions, then it is the duty of the Government to step in, and to bring the law into accordance with the requirements of the time. In fulfilment of this duty the Bill was introduced, and referred to the Select Committee, whose report, now on the table, we are, I hope, about to take into consideration. That report expresses the opinion of only a majority of the Committee on the points with which it deals. It was not to be expected that unanimity should prevail respecting a measure purporting to regulate questions so numerous, so delicate and so important, among members holding such antagonistic views as those entertained by extreme partisans on the side of the landlords and of the tenants. It was hopeless to think that those who considered that the tenantry throughout Bengal and Behar were living in such a state of contentment and prosperity that any attempt to amend their condition by law was altogether uncalled for could be brought to agree on provisions for that purpose with others who

believed that a diametrically opposite state of things existed, that the condition of the peasantry in many parts of the provinces was deplorable, and that the defects and abuses of the law by which this has been allowed and encouraged called for a speedy and drastic remedy.

"The reports and opinions elicited by the publication of the Bill, as introduced in 1883, and as revised in 1884, furnished the Select Committee with very valuable materials, in addition to those already accumulated, for deciding on the various contested questions, and the result has been a report with which neither party is fully satisfied. This dissatisfaction has been forcibly expressed in the recorded dissents, some of which blame us for what we have done, while others find fault with us for what we have left undone. Some censure us for needlessly and recklessly interfering with the existing state of things, others for having stopped far short of what was necessary to correct its evils. These contradictory animadversions raise a strong presumption that the majority of the Committee has avoided extreme measures on either side, and has turned a deaf ear to the songs of the sirens that, often with more vociferation than melody, attempted to lure us from what will, I hope, be found to be the course of prudence and of safety.

"Nor can this moderation be justly condemned so long as it effects the essential objects of the Bill. If there is one point more than another with which we have been impressed in the course of our deliberations, it is that the Government of Bengal is far behind other Governments and Administrations in the possession of accurate information respecting the condition and relations of the agricultural community. The existence of the Permanent Settlement relieved that Government from the necessity in its own pecuniary interest of making a record of rights in land—a measure the importance of which was realised at an early period in those provinces where settlements of land-revenue recurred at periodical intervals; and the mode of collecting the revenue by the single process of selling the defaulting estate at head-quarters deprived it of an agency in the interior of the districts, charged with the duty of making itself and its principals thoroughly acquainted with the landed classes, and all facts bearing on their condition. This being so, we felt that we were travelling along a somewhat dark road, and that a safe arrival at our destination was not likely to be achieved by rapid driving. The revised Bill undoubtedly does not go as far in the direction of tenant-right in its broadest sense as the Bill originally introduced, but it provides, I believe, adequate remedies for evils the existence of which is undoubted. It strengthens the defences of the raiyat at points which have proved to be weak; it does not provide him, at the expense of the landlord and possibly to his own destruction, with torpedoes to ward off attacks which there are no good grounds for anticipating.

"My hon'ble friend Sir Steuart Bayley has explained clearly and at length the changes we have made in the Bill as introduced, and the reasons which led us to make them. I shall not, therefore, weary the Council or prolong what is likely to be a protracted debate by following him step by step over the same ground. The importance of the provisions respecting the occupancy-right will however justify my dwelling on them for a short time even at the risk of repeating in feebler language what has been said about them by my hon'ble friend; and in what I shall say I have in mind the objections of those who think we have done too little for the raiyat rather than of those who consider that we have done too much. My hon'ble friend the Mahárájá, who is to speak after me, will, no doubt, put this last class of objections as strongly as they can be urged, and I have equally little doubt that most of the speakers who have to follow him will fully answer his objections on this score.

"The land of Bengal is divided into 110,456 estates, owned by about 130,000 proprietors; subordinate to these proprietors come a body of middlemen whose numbers can be only guessed at; they are probably about a million. Lastly, there are 10 millions of raiyats. Of these last, occupancy-raiyats form by far the most numerous and important class. About their numbers also there is much uncertainty; the lowest estimate I have seen puts them at 60 and the highest

at 90 per cent. of the whole number of raiyats, and, being the permanent agency by which the cultivation of the soil is carried on, they are the backbone of the agricultural organism of the country. It is clear from this that the provisions respecting them will have effects far more wide-reaching than those relating to the other classes of the agricultural population, and that if we have failed in adequately protecting the rights essential to their welfare, we have failed in the most important portion of the duty laid upon us. To show that we cannot justly be reproached with such failure I shall, following the example set by my hon'ble friend, ask you again to consider how the Bill found the occupancy-raiyat and how it has left him.

"The constituent elements of a tenant-right theoretically perfect are fixity of tenure, fair rent and free sale—the three F's. I need not enter upon an economical dissertation on the relative importance and value of these three principles. My hon'ble colleagues are probably much better able to instruct me than I them on the subject. We had, however, to consider in Select Committee to what extent these principles should be given effect to in our provisions respecting occupancy-raiyats.

"After long discussions and some fluctuations of opinion we came by different roads to the conclusion that in respect of free sale—or the power of transfer—the law with one exception, to which I shall allude more fully when dealing with fixity of tenure, should be left as it is. We were fully conscious of the stimulus to enterprise and improvement of the land which the power of raising money on the mortgage of his holding might give to a frugal and industrious tenant, but when we came to apply the principle generally, we found the risks attendant on suddenly enlarging in this way the credit of a weak and impoverished tenantry like that of Behar so great, and the difficulties in other localities of conceding to the landlords a veto upon the practice without strangling a healthy and rapidly-growing custom which is, we believe, of great public benefit to be so insuperable, that we determined to follow the cautious advice of the Famine Commissioners, and allow the right to be governed as at present by local custom.

"Those gentlemen write as follows on the subject of transfer in Bengal:—

'Though on the whole we regard the general concession of the power of sale of those* rights to be expedient and ultimately almost unavoidable, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognised by law, and where it has not it may be questioned whether the law should move in advance of the feelings and wishes of the people.'

"Article 41 of Mr. Justice Field's Digest states that under the existing law the holding of an occupancy-tenant is transferable by custom, and that in such cases no registration in the landlord's sherista is necessary. We, by section 183 of the Bill, expressly save customs, usages or customary rights not inconsistent with the Act, and by an illustration to that section call attention to its effect on the usage of transferring occupancy-holdings without the landlord's consent. My hon'ble friend Mr. Amír Alí has, I observe, an amendment on the paper proposing that we should go much further in this direction than we have done. The discussion on this will give an opportunity for a fuller statement of the reasons which actuated us than I need now trouble Council with. So far as regards free sale we have left the position of the occupancy-raiyat unchanged.

"Under Acts L of 1839 and VIII of 1869, a raiyat who claimed occupancy-right in any land was obliged to prove that he had held that land for 12 consecutive years immediately before the dispute arose. The unexpected effect of this provision was to make the acquisition of the status depend upon the will of the landlord, who had merely to shift the tenant about from one field to another, or, simpler still, to have the patwárí's papers, which were the chief evidence the Courts had to go upon, manipulated so as to show a change in the tenant of the holding or of some of its constituent fields. By either of these measures he

* i. e., occupancy.

might prevent the accrual of the occupancy-right, or defeat it when it had accrued. The Bill renders these methods of getting round the intention of the law, if not impossible, at least a matter of great difficulty. Occupancy-right will henceforward depend, not on the holding of any particular land for 12 years, but on holding as a raiyat for that period any land in the village in which the right is claimed. To prevent the accrual of the right the landlord must turn the raiyat out of the village altogether—a much stronger measure and probably more unprofitable than shifting him about from field to field within the village; while, on the other hand, the raiyat will find it much easier to prove that he has held some land in the village for 12 years than that he held the same land for that period. The same reasoning applies to the falsification of the patwari's papers. Such falsification will now be made more difficult to effect and more easy to detect. All raiyats are practically declared to be possessed of the occupancy-right in their holdings whose tenure of any land in the village as a raiyat has lasted for 12 years from the 2nd of March, 1871, or any subsequent date; so that no amount of shifting within the village will now avail to extinguish the raiyat's occupancy-right in land held by him, and no tampering with village-papers short of omitting the raiyat's name altogether will be effective for the same object.

"Besides this we provide further that all raiyats holding land shall in case of dispute be presumed until the contrary is proved to have held all or part of it for 12 years—a presumption of which the raiyat has not hitherto had the benefit, though it is, in our opinion, based upon existing facts.

"Again, under the present law, occupancy-rights could not be acquired in land known in different parts of the country as sír, zirát and khámár. We have reason to believe that in many localities this reserved area has been unjustly and illegally extended to the injury of the raiyats. We have laid down strict rules for the guidance of the Courts in determining what is khámár or zirát, and have stopped the growth, after the passing of the Act, of the area in which raiyats are debarred from acquiring rights of occupancy.

"These provisions constitute a great advance upon Act X of 1859, and facilitate the acquisition of the occupancy-right far beyond the present law. I shall not anticipate the discussion on the amendment of my hon'ble friend Mr. Reynolds, by alluding to the still greater facilities which the addition of the words 'estate' to sections 20 and 21 would afford. I hope I have shown that even if that amendment be not accepted the gain to the tenant from the provisions of the sections as they stand is very great.

"Act X of 1859 left it open to a landlord and tenant to defeat the accrual of the occupancy-right or to extinguish it when it had accrued by written contracts. The mischievous effects of this have been so fully explained to Council both to-day and on previous occasions when the Bill was under debate, that I need not now dilate upon them. Suffice it to say that we have in express terms declared to be null and void contracts of this nature, whether made in the past or in the future. The law will no longer give effect to contracts whereby a helpless tenant signs away his legal rights at the dictation of a powerful and unscrupulous landlord.

"The existing law allowed of the ejectment of an occupancy-raiyat from his holding if the amount of a decree against him for arrears of rent was not paid within 15 days. This provision furnished landlords with a ready weapon for destroying the occupancy-right. It gave them a direct interest in dealing oppressively with their tenantry, and it has not been everywhere allowed to remain a dead-letter. The Bill puts an end to all this. It recognises the principle that the occupancy-raiyat has a valuable interest in his holding which the landlord cannot be allowed to confiscate, by enacting that an occupancy-raiyat shall not be liable to ejectment for arrears of rent, but that his holding shall be liable to sale in execution of a decree for such arrears, and that the rent shall be a first charge on the holding. The interest of the tenant will thus be saved from forfeiture when he is unable, from calamities of season

or other misfortune, to meet his landlord's demands, and he will obtain so much of the market-value of it as remains after the claim for rent has been fully satisfied.

"Here also we considered that the tenant should be debarred from contracting himself out of his rights, and we have provided that no contract, whether before or after the passing of the Act, shall entitle a landlord to eject a raiyat otherwise than in accordance with the provisions of the Act.

"In close connexion with the point on which I have been dwelling is the legal power conferred upon the tenant in Bengal for the first time by this Bill of making improvements on his holding and of being recouped for such improvements when ejected by the landlord in the shape of compensation, or when his holding is sold in execution of decree or otherwise, by the enhanced price paid for the value added to the holding. This principle of compensation for tenants' improvements was adopted in Oudh in 1868, in the North-Western Provinces in 1873, and the extension of it to Bengal by the present Bill adds a strong bulwark to fixity of tenure for the occupancy-raiyat in that province. Taken with the other provisions respecting this element of tenant-right, to which I have been calling the attention of Council, it will place the Bengal occupancy-raiyat in a better position as regards fixity of tenure than that held by the corresponding class of cultivators in any other province of British India.

"I now turn to the question of enhancement, which is of no less importance. Fixity of tenure alone is of little use so long as the rent at which the tenant holds can be frequently and capriciously enhanced; on the other hand, nothing affords a stronger screw for squeezing successive enhancements out of a tenant than the arbitrary power of ejectment. An occupancy-tenant will under the threat of ejectment from his holding—generally the sole means of support for himself and his family—agree to enhancements which, at first small, gradually raise the rent to an amount which leaves him the minimum sufficient to subsist on. The two rights hang together and re-act on each other.

"By giving greater fixity of tenure we have restricted the landlord's power to exact capricious enhancements, and our next duty was to regulate the powers of enhancement directly conferred on him by law. These were twofold—enhancement by contract and enhancement by suit. The present law places no restriction on enhancement by contract. This was a point on which the Local Government laid very great stress, and at their instance we have provided that all contracts for the enhancement of rent must be registered, that the enhancement is not to exceed the previous rent by more than two annas in the rupee, or 12½ per cent., and that the rent is to be fixed for the same term as is fixed in case of enhancements by suit.

"The provisions of Act X of 1859 relating to enhancement by suit, according to the admissions of the tenant's friends and the complaints of his enemies, have proved for the most part unworkable—a state of things which my hon'ble friend Mr. Reynolds has described as a public scandal. If the law recognises the landlord's right to enhance, it should certainly not attach to that right conditions which render the exercise of it impossible. My hon'ble friend Sir Steuart Bayley has explained fully the alterations we have made with the object of removing this defect in the present law, and I shall confine myself to showing how far we have endeavoured to provide that the increased facilities for enhancement afforded by the Bill shall not operate unfairly or oppressively as regards the raiyat.

"At starting I may observe generally that, the easier enhancement by due process of law is made for the landlord, the less inducement he will have to resort to irregular and oppressive methods for securing the same end—a result of no small gain to the tenant when we find in some localities rents doubled by irregular enhancements in 16 years, and raised 500 per cent. by the same means in some estates within a comparatively recent period.

"The first of the grounds on which enhancement is authorized by the present law is 'the prevailing rate'. This ground I should gladly have seen

omitted from the Bill. It appeared to me that, looking to the impossibility of now discovering a parganá rate in most parts of the two provinces, and considering the abuses which have been proved to have attended the working of this ground of enhancement and the greater facilities afforded to the landlords for enhancements on other grounds, they would have had no just cause of complaint if this had been abolished. The question, however, was decided otherwise by the Select Committee, and their decision has been accepted by the Executive Government. But while so deciding they felt that some attempt should be made to prevent the possibility of the manufacture of bogus rates to be used as a lever for raising rents all round: and have laid down a rule, to be found in section 31, which will, we hope, be effective for this end. My hon'ble friend Mr. Reynolds has an amendment on the paper which he considers will be much more effective for the same purpose. Both the section and the amendment agree in providing that there must be a substantial difference between the rent sought to be enhanced and the prevailing rate, and that the prevailing rate is to be ascertained with reference to what has been actually paid for not less than three years, and both enable the tenant to show as a bar to enhancement that there is a sufficient reason for his holding at such an exceptionally low rate. Thus, whether the amendment be accepted or not, the tenant who has been allowed to hold at a low rate for special reasons will be protected from enhancement; only rents which are substantially below the prevailing rate will be enhanced, and the prevailing rate must be not a bogus rate, but one actually paid for such a period as will be a guarantee for its *bonâ fide* character.

"The section also provides for an enquiry by a Revenue-officer as to the prevailing rate if the Court cannot otherwise ascertain it satisfactorily. I need scarcely point out to the Council that the facts are more likely to be elicited by such an enquiry than by the evidence of witnesses whom the contending parties bring forward.

"I cannot understand how these provisions can be objected to as being but feeble checks on the abuses which have hitherto attended the working of the prevailing rate as a ground of enhancement. The omission of them and the retention of the prevailing rate in its present form would, in my mind, be much more disadvantageous to the raiyat.

"The next ground of enhancement, namely, a rise in the average local prices of staple food-crops during the currency of the present rent, has been substituted for a rise in the value of the produce of the land for which enhanced rent is claimed. The reasons which led to the change have been fully explained by my hon'ble friend Sir Steuart Bayley. The landlords complained that the law in this respect had become a dead-letter from the difficulty of working the rule of proportion laid down in the great rent case, and to meet this complaint, which appeared to be well-grounded, the present scheme was devised. The Select Committee believed it to be sound in principle, and considered that they could guard against its operating to the injury of the tenant by the special provision which gave an enhancement in proportion, not to the whole rise of prices, but only to two-thirds of such rise, thus allowing a deduction of one-third to cover increased cost of cultivation, and still more by the general rule, to which I shall allude hereafter, by which enhancements on all grounds are to be qualified.

"The change has not given satisfaction to either party, and I see that my hon'ble friend Bábú Peári Mohan Mukerji has placed on the paper an amendment proposing to revert to the old ground of enhancement which formerly proved so ineffective. If the old rule in all its clumsiness be restored at the request of the landlords, the advocates of the tenants will no doubt rejoice, and the landlords must expect little sympathy with future complaints as to the rule of their choice being unworkable. If the scheme of the Bill be retained, the tenant gets the benefits of the limitations to it which I have above referred to.

"Next, enhancement is allowed by suit on the ground of landlords' improvements, the justice of which cannot be gainsaid. Under the existing law this ground of enhancement, from the difficulty of proving the making and value of the improvements, must have operated unfairly to both parties. On one hand, it threw obstacles in the way of a landlord establishing his rights to enhancement, on the other it held out inducements to the fabrication and production of false evidence in support of claims which the raiyat as the weaker of the two parties could not always resist. The provisions of the Bill respecting the registration of landlords' improvements, and as to the considerations which are to guide the Courts in determining the value of the improvement to the tenant, will prevent enhancements being made for improvements which are not *bonâ fide* and which do not add to the value of the tenant's holding. No enhancement can be successfully claimed for an improvement which is not registered, and which does not increase the productive powers of the land; and in determining the amount of the enhancement, the Court must have regard to the cost of the improvement, so as not to give the landlord an inordinate increase of rent for what cost him but little, to the cost to the cultivator required for utilizing it, to the existing rent, and to the ability of the land to bear a higher rent.

"Lastly, comes the ground of enhancement on account of increase in the productive powers of the land due to fluvial action. This is a modification of the existing law, which contains no qualification as to the cause which gives rise to the increase in productive powers. My hon'ble friend Sir S. Bayley has explained that all other causes may be expected to fall under those which bring about a rise of prices, and, if they be not so, it is clear that the modification is in favour of the raiyat. In no case is the landlord to receive more than one-half of the increased increment so brought about.

"Among the grounds of enhancement under the existing law was the circumstance that the quantity of land held by the raiyat is proved by measurement to be greater than the quantity for which rent was previously paid. This provision appears in a different place in the Bill for reasons which were given in the Statement of Objects and Reasons, but an important alteration has been made in it for the benefit of the raiyat by the restriction that the landlord is not to measure more than once in ten years. In the absence of a cadastral survey such frequent measurements are a preliminary to a demand for increased rent, and give rise to serious disputes and much bitter feeling. Further, by requiring the Court, when determining the area for which rent has been previously paid, to have regard to the origin of the tenancy, the length of time during which it has lasted without dispute, local usage and like considerations, we have endeavoured to guard against enhancements which were really a rackrent being granted on this plea.

"I have thus gone through the grounds of enhancement recognised by the Bill, and have shown that they are each qualified by special restrictions to prevent their operating so as to weigh down the raiyat. We have, it is quite true, removed the public scandal to which I have already adverted, but in so doing we have not necessarily, we believe, subjected the tenant to rackrenting.

"Besides the limitations on the working of each rule, we have laid down for all cases the broad principle that the Court shall not in any case decree an enhancement which is under the circumstances of the case unfair or inequitable. It has been objected that this rule, however broad and benevolent in intention, will prove from its vagueness of no practical value for the protection of the tenant, and that we should have defined precisely in the Act for the guidance of the Courts 'a fair and equitable rent.' To such objections I can only say, try your hand at such a definition. The many able officers who have taken part in this long controversy from its first beginning, the Government of Bengal, the Government of India, and I may add the Imperial Parliament, have all failed to produce a definition of a fair and equitable rent which could be safely acted on by the Courts; and our Committee need feel no shame at being unable to do that to which they proved unequal. The Courts must be left to deal with each case on its own merits, and to exercise a judicial discretion

arrived at after a careful consideration of all the circumstances. That such a discretion will be inoperative in checking unfair and inequitable enhancements I cannot bring myself to believe.

"But although we were unable to lay down a rigid rule for determining a fair and equitable rent which would suit the varying circumstances of the six or seven millions of occupancy-raiyats throughout the two provinces, there was one matter on which we were nearly all agreed, that a rigid rule was both expedient and necessary. We recognised fully the landlord's right to enhance the rent of his tenants, and we authorized him to bring suits for the purpose on certain specified grounds, but we were satisfied that when he had thus attempted to enhance a tenant's rent, and obtained his enhancement, or failed to obtain it because there were no good grounds for it, the tenant should not for a considerable period be subjected to the worry and expense of a similar suit, or to threats of a similar suit, which would be equally effective for the landlord's object. This term was fixed in the Bill as introduced at 10 years, thereby following the precedent of the North-Western Provinces Act. In the Bill now before Council the term has been extended to 15 years—a term which, in my opinion, does not err on the side of excessive length. This provision gives the raiyat rest for 15 years. He cannot, as at present, be harassed by annual notices of enhancement which threaten to absorb the fruits of his industry and prevent his applying his full skill and labour to the cultivation of his holding. He has now the assurance that, let the karindár or thíkádár bluster as they may, so long as he pays the rent last settled, no legal pressure can be brought to bear on him; and this security and the independence engendered by it nerve him to resist all the more stoutly demands which have no legal warrant. I cannot hold this provision to be a feeble palliative; on the contrary I believe it to be a strong shield against unjust enhancements.

"We have also enabled the Courts to temper the rigour of their decrees by empowering them to direct that the enhancement shall be progressive if they think hardship would be the effect of giving full effect to it at once.

"The provisions as to the reduction of the occupancy-raiyat's rent are much the same as in the existing law, except that reduction, like enhancement, is made to depend on variation in the prices of staple food-crops. The same reasons which justified the adoption of this as a ground of enhancement warrant its retention as a ground of reduction. The arguments which tell for or against it in the one case are equally applicable to the other. If it is inequitable that a landlord should obtain an enhancement of rent on account of a general rise in prices or fall in the value of money as indicated by a rise in the price of staple food-crops, it cannot be contended that the tenant's rent should be reduced for this reason. On the other hand, those, of whom I am one, who hold that a rise of prices is a proper ground for enhancement of rent are ready to admit that it is an equally strong ground for reduction.

"We, however, go one step further than the existing law in this matter. We not only allow reduction for suit on specified grounds, as at present, but we provide a remedy for an evil which has already proved a scandal to the administration, namely, irregular enhancements of rent carried to such an extent as to endanger the welfare of the locality or public order. Under the former class fall those enhancements up to 500 per cent. to which I have already alluded, and under the latter those which brought about the Pubna and Mymensingh riots. With such evils the ordinary course of law is an engine too cumbrous and too tedious in its operation to deal effectively. People cannot be allowed to perish, or on the other hand to spread destruction over whole parganás while cases are being tried by the ordinary tribunals and fought out in appeal to the High Courts. The remedy must be prompt and drastic. We have accordingly empowered the Local Government, when it is itself satisfied and can satisfy the Governor General in Council that such a remedy is needed, to apply it by enabling a Settlement-officer to settle all rents and to reduce rents in any specified area generally or with reference to specified cases or classes of cases, if in his opinion the maintenance of existing rents would on any ground, whether mentioned in this Act or not, be unfair or inequitable.

"The power is not one to be lightly exercised, but the knowledge that Government has in its hands such a weapon must operate as a check on the oppressive exactions of grasping landlords.

"I have, I fear to the great weariness of my hearers, enumerated in detail the provisions respecting the rent of the occupancy-tenant, because it is on this point mainly that we are accused of having done least for him, or rather of having rendered his position worse than it is at present; but the objection underlying the arguments of some at least of the assailants of the Bill on this ground is not that we have done too little for the raiyat but that we have done too much for the zamíndár. They oppose really any ground of enhancement which can be made workable. They think that the raiyat will be better off by taking his chance under the existing law, which is so difficult for the Courts to give effect to, than if subjected to rules, however guarded, which can be made a reality. They are loud in their clamours against the restrictions by which it is proposed to qualify the rules in the Bill, but they have failed altogether to suggest others of a more satisfactory nature, or to substitute grounds of enhancement which would be free from the abuses to which they believe that these will be liable. We, on the contrary, think that no grounds of enhancement should be offered to landlords which the Courts are unable to work; and, while recognising reasonable and workable grounds of enhancement in the Bill, we have, to the best of our ability and judgment, made such provisions as will prevent their working unfairly or inequitably. By doing so we withdraw a strong encouragement hitherto held out to irregular enhancements, and, instead of a fitful and uncertain protection arising from the difficulty of working the rules, we give to the tenant the security that the rules cannot be worked to his injury.

"As regards another class of objectors who describe the restrictions we have imposed as 'feeble palliatives impotent to restrain the evils which the working of the enhancement sections is calculated to produce,' I hope I have satisfied the Council that this description does not accurately represent such measures as the modification of the rule respecting the prevailing rate, the deduction of one-third of the increase claimable on account of rise of prices, the provisions that only *bonâ fide* improvements by landlords and the benefits flowing from them to the tenants can authorise enhancement, the precautions to guard against a tenant's rent being unfairly enhanced on re-measurement, the general rules as to all decreed rents being fair and equitable, as to rents once settled being undisturbed for fifteen years, and as to progressive enhancements, and lastly the power reserved to the Local Government to send in the Settlement-officer to reduce rents without reference to the grounds specified in the Act when the local welfare or public order require the adoption of such a course. If these be feeble palliatives it is difficult to say by what other restrictions the grounds of enhancement could have been qualified which would not amount to a declaration that those grounds might remain on the Statute-book as a reasonable concession to landlords, but that in the interests of the tenants no practical effect should be given to them.

"We have further, as explained by my hon'ble friend the mover, applied remedies to the abuses of the right of distraint, of the collection of rent by monthly instalments, of the power of bringing, or threatening to bring, frequent suits for arrears; and we have endeavoured, by rules respecting the delivery of receipts and statements of account, to furnish all tenants with materials for resisting unjust claims for arrears of rent. Though petty in appearance, these are matters which closely affect the happiness and welfare of the raiyat.

"Finally, we have by the Record-of-rights chapter laid the foundation of a system which will in time extend to Bengal the benefits which have elsewhere been found to follow in the preparation and maintenance of an accurate record of the rights of the different classes having interests in the soil. This system cannot be brought into force over the whole country at once, and must of necessity be gradual in its operation, but as it spreads it will dispel the darkness as to agricultural facts which has so long covered these provinces, will

determine the mutual rights of landlords and tenants where they are uncertain, and by furnishing both with a correct measure of those rights will increase the value of landed property, will remove causes of strife, will deprive the powerful of pretexts for enhancement, and will strengthen the weak to withstand oppression."

The Hon'ble THE MAHÁRÁJA OF DURBHUNGA said:—"I regret that I cannot support the motion of the hon'ble member that the Bill should be taken into consideration. In my opinion it is not submitted to the Council in a form in which we can reasonably be asked to consider it. It comes before us disapproved and discredited by all parties. The raiyats are as much opposed to it as the zamíndárs; and are we, who are legislating in the interests of the zamíndárs and the raiyats, altogether to disregard their wishes and their opinions? Is there a single raiyat or a single zamíndár in the country who desires that this Bill should be passed? And if it is an undoubted and an undisputed fact that neither zamíndárs nor raiyats desire this measure, will this Council be justified in forcing it upon them? Are we to suppose that zamíndárs and raiyats are alike ignorant of their true interests? Surely they may be trusted to know whether a law will injuriously affect them or not. But if we are to disregard the expressed wishes of the parties who will be affected by the proposed legislation, upon whose opinion is the Council to rely? Are we to rely on the Select Committee? The Select Committee consisted of eleven members, but out of this number only three have signed the Report without reservation. All the other members have on most important particulars dissented from the Report. The Report, therefore, and the Bill, which has been drafted in accordance with the report, is practically the Report and Bill of three members only: and two out of the three hon'ble members have no practical experience of Bengal. The Bill, therefore, comes before us discredited and disowned by the majority of the Select Committee itself. If the Select Committee had been unanimous in their recommendations, some sort of justification might have been found for proceeding further with a measure which has been so universally condemned. But with this great divergence of opinion among the members of the Select Committee, there seems to me no other alternative but to withdraw the Bill. It cannot be expected that the members of this Council should accept the Report of the Select Committee as an authoritative document. If the members of the Select Committee are not themselves agreed as to the principles of the Bill, is it reasonable to expect that this Council should act upon their recommendations? If the Bill in its present shape is proceeded with, all the questions which engaged the attention of the Select Committee will necessarily be re-opened in this Council, and every hon'ble member will have to form his independent opinion upon them. But here an initial difficulty presents itself. There is absolutely no reliable information upon which you can proceed. The Select Committee had no evidence before them. They acted upon official opinions, which were generally conflicting and often misleading. My hon'ble friend Mr. Hunter has well described in his dissent the difficulty in which the Select Committee was placed. 'The Select Committee,' he writes, 'has been asked to deal with the entire relation of landlord and tenant in Bengal without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land right in Bengal, for in Bengal, almost alone among the provinces of India, there is no central department of statistics * * * which might in some measure have compensated for the evidence of witnesses heard in the districts. * * * The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.' Is this Bill, then, my Lord, ripe for discussion? Are we to legislate in uncertainty? Are we to pass a measure which will revolutionize and disorganize the whole rural economy of the country, without having any reliable data before us? From the very first the zamíndárs have

demanded an enquiry. They deny the facts and the assumptions upon which the Government of Bengal has proceeded. I will give one or two illustrations. The justification of the occupancy clauses in the Bill was based upon the fact that the zamíndárs of Behar were in the habit of shifting their raiyats to prevent the accrual of occupancy-rights. This fact, in their memorial to the Secretary of State, the zamíndárs of Behar emphatically denied. From my own experience I can affirm this denial. I can state as a fact that such a custom is not prevalent in Behar, and that I have never even heard of its existence, and yet the whole of the legislation with regard to those occupancy-rights has proceeded on an assumption which is absolutely baseless. Another charge made against the zamíndárs of Behar was that they rack-rented their raiyats; that rents were so excessive that the raiyats were left without a reasonable margin for subsistence. In their memorial to the Secretary of State the zamíndárs of Behar conclusively, as I think, showed that the charge was baseless, but the restrictions on enhancement have been mainly introduced into the Bill on the assumption that the charge is true. Is this fair upon the zamíndárs? Have they not a right to ask that their rights shall not be taken away on mere assumptions? Have they not a right to demand that the charges brought against them shall be sifted and examined before the legislature is invoked against them? But the Bill itself contains the best commentary on this charge. These raiyats, who are supposd to be so ground down and oppressed, are allowed to demand from their under-raiyats 50 per cent. more than they themselves pay. You are asked to restrict the demand of the zamíndár upon the raiyat, and at the same time to allow the same raiyat to demand for the same land 50 per cent. more than he pays himself. Can any inconsistency be greater? I have merely given these illustrations by way of example to show that we are legislating in the dark. The foundations of the Bill rest upon facts which are alleged and denied, and upon assumptions which are challenged as untrue. We have no ascertained facts before us upon which we can possibly proceed. There is assertion on the one side and denial on the other, and the truth has yet to be ascertained. If this is a correct description of the position in which we stand, is it possible to proceed with the Bill? How are we to decide between conflicting assertions? We may repeat in this Council the interminable discussions of the Select Committee, but in the absence of ascertained facts we shall not be able to arrive at any satisfactory conclusion. To me it seems amazing that we should be considering the matter at all. Among the many millions of people who will be affected by the Bill not a single voice has been raised in its favour. If it is passed, for whose benefit will it be passed? It surely cannot be wise to pass a Bill which will benefit no one and irritate every one. I look upon the Bill as disastrous in every point of view. It will be disastrous in a political point of view, because it will be regarded as a flagrant breach of the Permanent Settlement, and will therefore shake the confidence of the landed proprietors in the Government. It will be disastrous to the zamíndárs, because it will not only deprive them of their rights but will render zamíndári management for the future absolutely impossible. It will be disastrous to the raiyats, because it will give rise to endless disputes and lead to interminable litigation. For these reasons I am strongly of opinion that the Bill should be withdrawn, and that any measure which may hereafter be proposed should be drawn up on the lines of the present law, instead of sweeping away existing landmarks and disorganizing the whole fabric of rural society. I shall, therefore, vote against the motion that the Bill be taken into consideration."

The Hon'ble MR. EVANS said:—"I have to apologise to the Council and to Your Excellency for not being fully prepared to speak to-day on this important measure. Knowing the strong opposition of the Mahárájá of Durbhunga to the Bill, I not unnaturally counted upon his speech taking up the rest of this afternoon. I can only ask the indulgence of the Council in case my observations should in some respects be discursive, and in other respects insufficient, considering the importance of the measure before the Council.

"Your Excellency can well believe that it is with great reluctance that I have taken any active share in this legislation. My own heavy professional

engagements and the active opposition of many of my personal friends to this measure all combined to make me desire to avoid it. Believing, however, as I did and do, that some legislation on the subject was, in consequence of the admitted imperfections of the Act of 1859, necessary for the welfare of the country, I did not feel myself at liberty to decline to give what assistance I could to the undertaking.

"In this task the Select Committee have been beset by many difficulties, of which perhaps one of the greatest is the initial mistake that was made in not having two Bills, one for Behar and one for Bengal. I have always thought this a mistake, and I believe other members of the Select Committee have thought the same.

"In Behar, as a rule, the landlord is strong, the raiyat weak. In most parts of Bengal, notably in the Eastern Districts, the raiyat is stronger than the landlord. It was, however, decided by Government that the Bill was to be a general rent law, and not two special laws to meet the wants of the two provinces. We have done our best under these circumstances. But the result is unavoidable, that those whose eyes are mainly fixed on the poorest parts of Behar say we have not done enough for the raiyat, while those who mainly regard the condition of Eastern Bengal accuse us of having done too much for the raiyat and having done too little for the landlord. There have been very strong statements before us that in Behar, or portions of Behar, the raiyats are so rackrented that they have absolutely no sufficient margin for subsistence; they are described as having an actual insufficiency of food. If things are as described by some of the officers of Government, and if this state of things can be remedied by legislation, it would justify legislation of a most drastic character for the special local areas where these evils prevail. If it be shown that these evils arise from rackrenting, and can be cured by stopping enhancement altogether, or even by reducing the rents, it should be done by special legislation.

"But all that we can do in laying down general rules for the regulation of the law between landlord and tenant is to provide such rules as shall prevent such a state of things arising where it does not already exist, and to arm the executive with power to interfere, if absolutely necessary for the public welfare, pending the further enquiries necessary for legislation of such an exceptional character. This I think we have done. My hon'ble friend the Maháráját of Durbhunga denies that such a state of things exists among the raiyats in Behar, and it may be that the poorest class are sub-raiyats. It may be, again, that many of them are technically raiyats holding as such a very small portion of land, too small for the subsistence of themselves and their families, and eking out a scanty subsistence by holding land at a rackrent under substantial raiyats and by working as day-labourers. This state of things would require a different class of legislation. These considerations have led me to the belief that this question of peculiar special local areas must perforce be left to special legislation. It would be wrong to legislate for the sixty-nine millions in Bengal upon any idea that such was the case in general, or that such things prevailed to an extent which would justify us in offering a remedy by any general rules. Having said this much, I desire particularly to say that if such a state of things can be shown to exist, and to be capable of being remedied by legislative attempts, I for one am perfectly willing to adopt that special remedy which may be shown to be necessary. Before noticing the special provisions of this Bill, I desire to say a few words upon the history of the occupancy-right. The subject has been so exhaustively discussed on both sides that I can add little to what has been said, and what little I have to say arises mainly out of a fresh pamphlet recently published. I have here before me a pamphlet entitled 'Proprietory Rights of the Zamíndár,' issued by the Central Committee of the Landholders of Bengal and Behar. I am glad to see from this work that upon one point we are agreed. In page 12 I find these words:—

'Under the customary law the resident or occupancy raiyat was entitled to hold his land so long as he paid the general rates which were settled for the village or parganá in which he lived: so far both sides agree.'

"We have this much to agree with at any rate, that, on the universal customary law of India, there is a fixity of tenure, so long as a man pays his rent; and the book goes on to say that the real point in the zamíndár's opinion is the question of how he is to enhance, and it goes on further to say that the will of the zamíndár should be the sole arbitrator of the amount of enhancement, and it challenges us to show that at any time in Bengal since the time of the Permanent Settlement the ruling power has ever exercised the power of regulating the assessments upon the individual raiyats. No doubt, though by the institutes of Akbar, the relative proportions of the produce were settled between the cultivator and Government, yet, as Mr. Shore said, even when the Government professedly dealt with the raiyats, it was found impossible in practice to assess each individual cultivator, and so the distribution of the assessment was left in Bengal to the zamíndárs. But this is very different from a right to demand what they pleased. I certainly agree with the Court of Directors that it was 'a general maxim under the Moghul Government that the immediate cultivator of the soil, paying his rent, should not be dispossessed. This necessarily supposes that there are some measures and limits by which the rent could be defined, and that it was not left to the arbitrary discretion of the zamíndárs.' It is, I think, quite evident that there was a right of some sort in the cultivator which was not illusory. There was some kind of right as regards the quantity of rent. The fact that it was the zamíndár and not the Sovereign that fixed the rent can be very easily accounted for. In a huge despotism like that of the Moghuls,—a central despotism,—powers to a very large extent were delegated to the Provincial Governments, which in turn delegated many of their powers to the great princes and the great zamíndárs; and we all know that these great princes and zamíndárs exercised the authority and the functions of Government, both civil and, to a certain extent, criminal as well; and therefore it came to pass that with regard to these matters of revenue over which there was no control by any Courts in those days, nor any written law, no redress could be had save possibly by petition to the Executive Government, which would, save in rare cases, receive little attention. So far as we know, no questions of rent were allowed to be discussed in the Courts, and the consequence was that the settlement of all questions *quoad* the raiyat was in the hands of the zamíndárs not as owners of the land but as delegates of the Sovereign. It is admitted now that the zamíndár had really proprietory and hereditary rights; but how could he assert those rights? Could he go to a Court of law and ask for a decree against the Sovereign Power? He had to take what he could get from the Sovereign Power; hence it was that with a despotic Sovereign Power all rights must necessarily be uncertain in their enjoyment. There was no tribunal to appeal to, and all proprietory rights were of a precarious nature. But we know that, however despotic a Government may be, rights of property must be recognised more or less. Subjects and rulers both recognise the existence of unwritten law and customs even under a despotism, and are generally guided by them, even though they often use their powers to trample on them. Therefore, I do not think there is anything in this objection, that the Sovereign did not directly fix the individual raiyat's assessment. If the Central Government was far away, the delegate was allowed to do what he liked. I think it comes to what Mr. Harrington says in his 'Analysis' that in the decay of the Moghul Power the ruling Power plundered the great zamíndárs, who were in turn forced to plunder the raiyats. That is, I think, the real explanation of much of the confusion which has been thrown upon this subject. When in later and more peaceful times the matter came to be examined, then the fact became clear, which is stated in the Report of the Parliamentary Committee of 1832, that—

'In the general opinion of the agricultural population, the right of the raiyat is considered as the greatest right in the country; but it is an untransferable right.'

"And they go on to say:—

'This part of the evidence before your Committee has been particularly adverted to, as it is of so much importance that the Government cannot be too active in the protection of the cultivating classes, for the vital question to the raiyat is the amount of the assessment he pays.'

"If this be so, we really find the position to be as follows:—It being conceded now that there is such a thing as a customary law giving such occupancy-rights, it follows that everybody who before the Permanent Settlement had held or reclaimed land in his own village, without exception, acquired occupancy-rights. What was the effect of the Permanent Settlement? It was a contract between the Government and the zamíndárs in which the Government gave the zamíndárs certain rights, and the Government had declared, so far as the Government could declare, that the zamíndárs were the proprietors. But this cannot be said to make any alteration in the unwritten law, nor could it affect any persons who were not parties to the contract; and the case may be stated thus. The man who came in the next day after the making of that settlement, who claimed land or held land in his own village, was under the same old customary law as before, and by virtue of that law acquired a right of occupancy. The truth is that, at the time of the Permanent Settlement, Government settled their own disputes and quarrels with the zamíndárs. They were very numerous, and zamíndárs had just reason to complain, and did in fact make the complaint heard in Parliament. The final settlement of all these difficulties as to the respective rights of Government and zamíndárs was come to in the Permanent Settlement. The Government, finding that the matter of the rights of the raiyats was an obscure and complicated matter, which they could not go into on account of its intricacies, left it alone, because they thought it could probably be settled by agreement between the zamíndárs and their raiyats, much in the same way as they had settled the difficulties between themselves and the zamíndárs. But what was the position? The raiyats continued as they came in to cultivate their lands and to acquire the same rights under the same old customary law, which was never abrogated save so far as it might be affected by the express provisions of any of the Regulations. The only difference was that, whereas before they acquired their rights against the Government and zamíndár, after the Permanent Settlement they acquired the same rights against the zamíndár, as representing his own and the Government title, and that the Government had left only a perpetual charge on the land with the duty solemnly reserved to protect the raiyats, and to legislate when they thought it necessary for their protection.

"But the hoped for result did not come to pass. The raiyats and zamíndárs did not settle their respective rights amicably, and so it befell that, at the end of 60 years, the legislature found it necessary to lay down some rules in regard to the enhancement of the rates of rent which were demandable from the raiyat. Now one of the main arguments of this pamphlet is that the legislation of 1859 was a breach of the Permanent Settlement; and they make it out in this way. They say that before the Permanent Settlement they had the right to demand rent according to their own arbitrary discretion. Shorn as they have been of their civil and criminal jurisdiction, and no longer representing the ruler's power, they still contend that their will is the measure of enhancement, and that the effect of the reign of law which the British Government have introduced is that the Courts ought to register their arbitrary demands as decrees, and that the resistless might of the executive should be at their call to enforce their decrees and protect their persons. It is upon this view of their rights that the pamphlet really proceeds. It is upon that ground, they say, that we departed from the Permanent Settlement in that Act of 1859. I deny that altogether. I think it was clearly competent to the Government to legislate as it then did. But it is idle to go into a question like that, because, if they once admit that the Government had the power, in 1859, to make these rules to regulate the rent, and to define the occupancy-raiyat, they cannot deny that this Council has in 1884 the right to amend the definition and the rules. If they rest on the argument that the legislation of 1859 was improper, we can only say that that question is long ago concluded by authority, and that it is useless to discuss it save as a forensic exercise. As regards the position in 1859, it stood very much in this way. Nothing had been done for 60 years, and it was found that matters were not satisfactory. The legislature came to the conclusion to make rules. They first desired to define who had the right of occupancy, so as to enable the Courts to ascertain that fact. Then they pro-

ceeded to make what they considered to be fair and equitable rules to guide the Courts in decreeing enhancements of the rents of occupancy-raiyats, and they made an express reservation that the occupancy-right should not accrue in respect of any land as to which the raiyat had contracted expressly that he would give it up at a certain time. As regards those raiyats who had not a right of occupancy, it was decided that they must give up the land on reasonable notice; but that so long as they were allowed to remain, no more than a fair and equitable rent could be demanded from them.

"These were the main provisions, but complaints were soon heard. The zamíndárs complained that the grounds of enhancement were unworkable, and that they found moreover often insurmountable difficulties in obtaining in fact the enhancement to which they were in theory entitled; while those who had at heart the interests of the raiyat complained that the effect of the definition as construed by the Courts was to defeat the intention of the framers of the Act, and to shut out from the status of occupancy a large number of raiyats who were entitled to it. It was complained of on both sides. The raiyats, or those who spoke for them, complained that they had very great difficulty in proving the occupancy-right. They pointed out the immense difficulty of proving 12 years' continued cultivation of the same plot of land, in that there were no fences as in England. The raiyat might be holding five or six little plots in a large plain of rice-land divided into plots by temporary ridges of mud. The only documentary evidence, measurement-papers and zamíndári records of rents and holdings were all in the hands of the zamíndárs and liable to falsification by zamíndári servants. They also complained in respect of various portions of Behar that there was a practice of shifting them from one village to another. Now I understand my hon'ble friend the Maháráját to say he has ascertained that that is not done for the purpose of preventing the accrual of the occupancy-right. That may be so, but this much is certain, that for some reason or other the raiyats in many, if not most, parts of Behar were unable to avail themselves of the protection of the occupancy clauses even to the limited extent which their brethren in Bengal could and did. On the other hand, the zamíndár complained, and complained rightly, that he could not get the enhancement he was in theory entitled to. We all know the immense difference between what is the result in theory and fact. It was one thing to discover the motive power of steam and another to construct the locomotive engine. The data were left to the Courts to discover, and unless the Courts found the data it was impossible to work the rules at all; and in working these rules there were very many difficulties. I will not go into them in detail; they are familiar to all who are conversant with the subject. Now it is a very demoralising state of things when we dangle before a man's eyes his rights, and assure him they are his rights, and send him to our Courts to enforce them, and then provide the Courts with such rules that the odds are against his getting them. Perhaps the most workable of the rules was the 'prevailing rate' as interpreted by the Courts, but the vagueness of the expression 'places adjacent' rendered this uncertain. Besides, if the 'prevailing rates' were too low, he got no remedy under this head. It has been said that it was the outcry of the zamíndárs on this head, and on the score of difficulty in realising rents, that led to this legislation, and that we have forgotten this, and legislated in favour of the raiyat instead. But we have tried to grapple with both the evils above mentioned by altering the definition in favour of the raiyat and making the grounds of enhancement workable in favour of the zamíndár; and if we have failed to facilitate in any marked degree the realisation of rent, it is because all the summary remedies proposed failed to yield just and satisfactory results. Having failed ourselves to do any more than is here set forth, we applied to the Judges, and the Council have seen their answer.

"As to the charge of having legislated for the raiyat without sufficient reason, you will have seen what has been said about the imperfection of the Act of 1859, from its passing to the present day, and attention had been directed afresh to this matter by the recent famines, and it was felt to be unjust to redress the complaints of the one side without taking into consideration the just demands of the other side. Besides, it became apparent that our best

method of carrying out the often declared policy of the Government of protecting the cultivating classes, who form the bulk of the population, lay in extending the definition of the occupancy-right in such a way and to such an extent as to secure the fruition of that right to the great mass of the raiyats, who in my judgment ought to possess and enjoy it. Believing that with an advancing education nothing but trouble can befall us if our laws do not recognise what the agricultural population firmly believe to be their old and just right, that is, the right of occupancy, I have not hesitated to accept such amendment of law as seemed necessary to that end. I will endeavour to describe briefly what we have done on this essential point. The whole revenue map of Bengal, speaking roughly, is divided into small village areas of different sizes and shapes called mauzás. Now, a resident raiyat had by the old custom a right of occupancy in the land in his own village, but in no other land. New villages sprang up, and even within the same village area arose detached clusters of homesteads, subsidiary villages or tolas came into existence, many of them near the boundary of the next village; and as the cohesion of the old village communities with their old organisation decayed, it became more common for the inhabitant of one village to become a permanent cultivator, though not a resident, of an adjoining village. It was thought right in 1859 to make permanence of cultivation and not residence the ground of the occupancy-right. I think this was only such a modification of the old law as might fairly be made to suit the altered conditions of the times, and so the rule laid down in 1859 was that whether a raiyat was a khudkhast raiyat or pykasht raiyat, yet having shown that he cultivated the same land for twelve years he should have a right of occupancy. The mistake was in providing that he should show that he had cultivated that particular piece of land for twelve years. The amendment that we have made is by providing that it should be enough that he is a permanent cultivator either in this or that village area, and that he should thereupon be considered to be an occupancy-raiyat of those village areas in which he is a permanent cultivator. Now this makes a great difference, as we get rid of the whole difficulty of proving that he cultivated a particular plot of land for twelve years. If he is a cultivating raiyat of one mauzá or village where he has his house and in two mauzás alongside, he should be held to be a settled raiyat of the whole three mauzás and have a right of occupancy in all of them.

"It must be abundantly known that a raiyat is not a man who goes about as a nomad, but is really attached to his own village; and so it follows in reason and common sense that he cannot cultivate except near his own village where his home is. If he takes up land he generally takes it up permanently. He may take it up for a temporary purpose, but ordinarily he takes it up either in his own mauzá or in the adjoining ones, and then no power can drive these men out of their own villages. The result is that this rule goes far to secure that the ordinary class of raiyats shall be entitled to the occupancy-right. We have made a further provision. Whereas the Act of 1859 said 'you shall be an occupancy-raiyat of every piece of land which you have cultivated for twelve years,' yet it has this exception, 'provided that the landlord does not prove a contract by which the raiyat took up the land on the condition of not being an occupancy-raiyat.' It is no doubt a strong thing to override a written contract, but it was thought that there was a tendency to insert this in every contract, and there is no doubt that it would be inserted to a very large extent; and therefore the Committee assented, though not without reluctance, to the insertion of a provision by which the raiyat is barred from contracting himself out of his occupancy-right. It was of very paramount importance to my mind that we should secure this right of occupancy to the raiyats, and not leave room for any device by which it might be defeated, bearing in mind that with illiterate and poor persons anxious to get land a provision of the kind might easily be slipped into a document. It was also apparent that both the zamíndárs and under-tenure-holders here are not people who desire the possession of land for cultivation, but they are simply rent-receivers. The only thing they desire is that the land shall be cultivated by the raiyats, and that they will pay as much rent as possible, and as regards the bulk of the zamíndárs of

Bengal, there is not much hardship, because you are merely attaching a customary incident to the holding, and the only result is that the landlord is bound to enhance according to certain rules and not arbitrarily. Such a man cannot very much complain if we provide that the land shall be held under such circumstances that the right to enhance shall not be arbitrary but according to fixed rules. But there is another class of proprietors in respect of whom there really appears to be considerable hardship. These are persons who acquired land for the purpose of cultivating, at an expense beyond the power of the raiyat, certain valuable crops, such as tea and indigo. They have great ground to complain of these restrictions, namely, that it prevents them letting out temporarily to residents of the village any lands which they do not for that year wish to cultivate themselves. They say, very rightly, 'we want to let out the lands, which we wish to be cultivated for a year or two.' Take an ordinary case. The indigo plant derives its nourishment very far down in the ground, and it is a very exhausting crop. Rice, on the other hand, grows right on the top of the land, and does not exhaust the land except near the surface. An indigo-planter has in his hands a large tract of land, say, of 2,000 bighás, on which he grew indigo last year. The raiyats, on the other hand, have another tract of land in their possession, and they come under the new Bill and say, 'let us have the land, which will give us an abundant crop of rice, and do you take our land for indigo for this year. We will pay you so much for your land, and we will give you back your land next year.' Under our legislation the zamíndár is obliged to say 'I must let the land to a person from another village, because you will acquire occupancy-rights in this land; you are not competent to contract, and therefore, though a stranger offers me only half the rent, I must either let it to him or keep the land fallow or try and grow another crop of indigo, because the legislature has determined that you shall not contract yourself out of the right of occupancy. I should have to trust to your honesty, because the law will not recognise a contract entered into by you.' There is no doubt whatever of the very considerable hardship of this provision, and the only thing which will justify the doing of it is that the class it will affect is small. It is not very clear how landlords can protect themselves against this provision. Possibly they may do so by letting the land to a stranger or by getting the raiyats to exchange the lands which they cultivate, under some form of contract not amounting to a tenancy. But this, even if possible, would not meet all cases. I still hope that my hon'ble friend Mr. Ilbert may see his way to drafting some clauses which will give relief in these cases, while providing against abuse.

"The evil to be guarded against is that, if a raiyat is allowed to contract himself out of the occupancy-right, such a condition would, I fear, in time be be found in every pattá, and thus the main object of protecting the occupancy-right would be defeated. The result of this legislation is that the bulk of the raiyats must be occupancy-raiyats, though new raiyats coming in from time to time would not become occupancy-raiyats until the expiration of twelve years.

"We have gone further and provided that when a raiyat is found cultivating as a raiyat, that is, paying rent for any piece of land, he shall in a suit by his landlord to whom he pays rent have the advantage of a presumption that he has been cultivating that piece of land for twelve years.

"The reasons for doing this are that the documentary evidence on this head is in the landlord's hands, and not in his, and that as a matter of fact most of the land is cultivated permanently, and the raiyat is often so poor and illiterate and so ill equipped to meet litigation, and so ill provided with money and reliable evidence, that it was feared that, without some provision of this kind, our efforts to secure him the enjoyment of the occupancy-right would not have the desired effect.

"This provision has been much complained of, but many of the strictures made on it are based on misconception. He does not by this clause get a general presumption that he is an occupancy-raiyat in consequence of his holding some undisclosed piece of land in the village or the estate. He gets the

presumption only as against the landlord to whom he pays his rent, and who has the best evidence in his hands, and only as regards the particular land in dispute. This limitation, when duly borne in mind, disposes of many of the objections made against this presumption, though no doubt some remain in the case of the auction-purchaser, and will have to be discussed on the proposed amendments. But I think, in spite of them, it should be retained. As to the relief to the raiyat in cases when his occupancy-right is threatened to be disputed in Court, it is immense. The difference in all countries is great when the onus of proof is shifted on one side or the other. The person on whom the onus of proof lies has always to discharge a heavy burden. But if the onus of proof is so burdensome in all cases in countries where facts are more or less ascertainable, what must it be in this country, where everything brought before the Courts is too often illusory, where oral testimony evidence is so often worthless, and documentary evidence is frequently forged? I don't mean to say that the zamíndárs tamper with their documentary evidence, but it is quite certain that the gumáshtas and other inferior servants do it. This being the state of things, it makes an enormous difference on which side the burden of proof is thrown, and it may be said that it is easier for the zamíndár with his documentary evidence to prove that the particular piece of land has not been held by the raiyat for 12 years than for the raiyat to prove that it has been so held. I think that is going a long way in behalf of the raiyat, and I am astonished to find that my hon'ble friend Mr. Reynolds appears to think that we have not gone far enough, and that we ought to give him an occupancy-right in the estate, if he has held any land in any part of it for 12 years. I must point out the difference between a village and an estate, and the effect of introducing the word 'estate,' which has been cut out by the majority of the Committee. The villagers are the villagers of a particular village, just as much as parishioners are parishioners of a particular parish; and the best illustration is to describe a village as a parish. Then the position is this. If a man is asked where he comes from, he at once says, 'I am so and so, the son of so and so, of a particular village.' On the other hand, an estate is an abstraction, a revenue-unit on which the Government revenue is paid, and which is liable to be sold up in default of payment of revenue. This unit is sometimes very large. It extends sometimes to 50 or 100 miles. Still the zamíndárs frequently sublet the estate in whole or in part, often in a number of perpetual tenures, generally known in Bengal as patnís. Each patnídár may again sublet in perpetuity by one or more under-patnís, and so on.

"Now, it is the lowest in gradation of the under-landholders who has to deal direct with the raiyat. He perhaps has in his tenure 10 villages out of 100 or 1,000 forming the estate, or he may have only one village. He can tell who are the raiyats of his villages. He has got power there and the means of knowledge, but with regard to the other villages in the estate he knows no more than I do. Why should the tenure-holders of other villages give him any information? Now, what is the result? When in good faith a small tenure-holder has let a little piece of land to a stranger, this stranger says 'No doubt I said I will give up the land in a year or two, but I have a brother 20 miles away in the same estate; and although I am not even on the register of the landowner there, I enjoy it jointly with my brother, and under the cover of my brother I am a settled raiyat of the whole estate, and therefore I cannot cultivate any land in this large estate without acquiring the right of occupancy.'

"The particular landlord of this man knows nothing of the distant place, and cannot well ascertain whether the story is true or false. There is no warrant for this in the old customary law of the country, and I do not see any reason for doing that which it is so very difficult to justify. I am aware that this word 'estate' is in the Secretary of State's despatch, and in the Bill as originally framed; but it is doubtful if the Secretary of State ever considered this particular point, or used the word in this sense. But whether he did or not matters little, for neither his despatch nor the Bill as first drafted contained the presumption, and it is very evident to me that my hon'ble friend cannot have both. It is going altogether too far.

"I hope I have satisfactorily shown that we have done a great deal for these occupancy-raiyats, and that we have strong reason for doing it. I have next to consider what we have done for the zamíndárs, because the allegation is that, while we have done a little for the raiyat, we have done nothing for the zamíndár. First of all, we have provided that the rise of prices shall be a ground of enhancement. It appears to me that that is in effect to fix the present rent in the staple grain of the country, so that the zamíndárs shall get the benefit of a rise in the value of the grain, with this proviso, that they shall not get the whole of the rise but only two-thirds, one-third being reserved to cover the increased cost of production, and that the rise should be a rise in the average price of over a period of ten years. It must be evident that this will be very beneficial to the zamíndár. First, we know that the value of money, as compared with the value of grain, has been falling; that 12 annas per maund was the price of rice at the time of the Permanent Settlement, and we see how enormously more silver it now takes to purchase a maund of rice. The result of this amendment is to establish a sort of self-acting scale by which the Courts, by performing a simple sum in arithmetic by reference to the Government price-list, would regulate the enhancement, and the zamíndár would be enormously benefited, and saved much of the present harassing and uncertain litigation. We know that in a great part of the country the rise in the price of cereals has been very great, but the provision in the Bill merely fixes the rent of the zamíndár, so far as the ground goes, at so many maunds of grain. At the present time no permanent fall of prices need be expected, as prices are steadily rising over decennial periods, though they are falling in certain years which only affect the average. No doubt the zamíndár may say, 'Why do you call this a ground of enhancement at all? It is merely adjusting the rent to meet the depreciation of money as compared with grain.' But it is something which he had not before, and which will give him steady enhancement, and, this being so, no word-splitting will alter the reality of this ground of enhancement, and most zamíndárs who wish to get on without harassing litigation will hail this as a substantial relief from the present position as regards the power of enhancing occupancy-raiyats. On the other hand, it has been said that this is a very sharp weapon to place in the hands of the zamíndárs, and that this enhancement ought to be treated as a great boon, and that, this boon being granted, the prevailing rate ought to be struck out. But this is simple justice to the zamíndár if you accept the Secretary of State's clear enunciation that the rents at present existing are to be considered fair, and not to be reduced except under special cases. The real meaning of the complaint is that it is believed that certain parts of Behar are rackrented already, and that any enhancement we legalise is an unmixed evil.

"If the districts of Behar are so rackrented, nothing you can do in the way of laying down general principles will help it. You must have special legislation to meet such cases. I therefore say that what we have done in respect of enhancement on the ground of rise in prices, while it is but justice to the zamíndár, greatly betters his position, and is a substantial amendment in his favour. Then we come to the question of the prevailing rate. It has been said that that provision should be struck out. I wish to point out that enhancement on the ground of the prevailing rate has existed in one form or another from the time of the Permanent Settlement. This ground of the prevailing rate is a ground on which enchancement was allowed, and it was put in the Act of 1859, and it has been worked ever since. We have been strongly pressed by the Government of Bengal to drop the 'prevailing rate' as a ground of enhancement. And I observe that His Honour, in his official dissent, assumes, on the strength of the opinion given by various persons, that this ground is never worked except by fictitious rates. But though there are false cases started under every law that we have made, and fictitious evidence manufactured to meet the requirements of the law, yet, so far as I can learn, the majority of the cases on the prevailing rate contain no more perjury or fabrication than seems to be incidental to the bulk of litigation in this country. At any rate, the appeal pending in the High Court, in which the Government claim on the

ground of 'prevailing rate,' enhancements from 100 to 400 per cent., has a strong bearing on this and the next point.

"As to this point, it would seem to show that the legal advisers of Government share my opinion that it is possible to prove an enhancement case on the ground of the prevailing rate without having recourse to fictitious rates or any demoralising process, for it cannot be supposed that any element of that character enters into a case which is in charge of that venerable body the Board of Revenue and the officials under its orders. Of all the grounds given in Act X of 1859, the ground of the prevailing rate has, I think, proved the most workable. I cannot share the apprehension of my hon'ble friend Mr. Reynolds that we have left the occupancy raiyat defenceless in the matter of fair rent and liable to be forced up to a rackrent.

"The 'prevailing rate,' which is even more necessary under this Bill than it was before to check the effects of fraud and favouritism of gumáshtas and others, cannot bring the rent higher than the present prevailing rates as increased in money expression by the fall in value of money as compared with grain. They seem therefore fair general rules for places not already rackrented. As to those places which are rackrented (if any), I have already expressed my opinion. I have thought it necessary to give reasons for the retention of the 'prevailing rate,' although there is no amendment proposing to strike it out, because the majority of the Committee differed upon the matter with the Government of Bengal, and it appeared necessary to me to justify the position taken up by the majority.

"Section 29, clause (*a*), I consider to be absolutely indefensible. Mr Henessy's memorial has shown that a large proportion of his raiyats have holdings under Rs. 5, and that the cost of registering contracts is prohibitive in such cases, but he has also drawn attention to the fact that in many places it is impossible to get the raiyats to give kabuliyats or take pattás. He instances the case in which the Commissioner of Bhagulpore, Mr. Alonzo Money, entirely failed to force the raiyats to do so on a ward estate. And it appears that Mr. Reilly, managing the Chanchal Estate under the Board of Revenue, has equally failed. We all know that it was made a universal rule under the Permanent Settlement regulations that the engagement as to rent should be in writing. We all know that it has been found impossible to enforce this, and that the rent engagements in many parts of the country are still oral, and that the only trustworthy evidence of what the raiyat has agreed to pay is to ascertain what he has actually paid. It would appear that the real effect of sections 28, 29 and 30 is to provide that those raiyats who have no written engagements and who traditionally refuse to sign anything can never be enhanced legally except by suit. What the effect of this will be in cases in which they have orally agreed to enhancements and have paid at enhanced rates for a year or more it is difficult to tell. This matter should be seen to, and some provision made for it. But apart from this I regard clause (*a*) of section 29, which protected the raiyat from agreeing to an enhancement of more than two annas in the rupee or 12½ per cent. out of court as exceedingly mischievous, and likely to lead to lamentable consequences in many cases both to landlord and tenant. It is fatal to the raiyat in many cases.

"Take the Government case against a large body of raiyats in Malanagor, to which I have just referred. There the Government had a very heavy claim, from 100 to 400 per cent., against the raiyats, who number in all 600 or 700. It was certain that, unless the raiyats could establish fixity of rent, an enhancement of far more than 12½ per cent. would be decreed, as they most undoubtedly held for a very long time at very low rates on condition of growing oats. Is it reasonable that, if a test case had been tried, or from some other reason, the raiyats came to the conclusion that it would be to their interest to accept a 25 per cent. or even 50 per cent. enhancement, they should be prohibited from doing so, and the landlord should be forced to drag them each one into Court, and obtain decrees for the full amount he was entitled to, with costs, stamp-fees, &c.? There are large numbers of raiyats holding at low rates on condition of cultivating indigo, and it is within

my personal knowledge that, when it is proposed to discontinue indigo, they agree willingly to large enhancements of the rents, considering it beneficial to themselves to do so. Mr. Henessy states that he has let lands, the letting value of which is one rupee, for eight annas on condition of the raiyats growing indigo. The raiyats would all be enhanceable on the ground of 'prevailing rate' when indigo is discontinued, and would probably consent to a 50 per cent. enhancement. Is it just to them to force them into Court with its heavy expenses? Is it just to the landlord to force him to undergo the expense ruinous to him unless he recoups himself by ruining the raiyat? It is not just, nor can I believe it is necessary. At the time of the Permanent Settlement it was thought right to leave everything to contract. We have found that freedom of contract must be limited in certain cases, just as in England it has been found necessary in the matter of hares and rabits. But if there is one thing which the raiyat thoroughly understands and is specially heedful about, it is the *narikh* or rate per bighá which he is to pay. This is the one subject which he thoroughly understands, and which he is most deeply interested in. It is most difficult to get him to consent to an enhancement unless he is satisfied he cannot resist. It is by watching test cases and the fate of his neighbours' litigation he satisfies himself that it is more to his interest to agree with his adversary than go to law. It is a cruel mercy to him to insist against his better judgment that he shall be ruined by litigation. If the raiyat is not given power to contract in these cases, it is difficult to know in what cases he ought to have the power. I do not think that 100 years of British rule has left the raiyat in so much less intelligent a condition than he was when we came, as to call for any such provision. I know well it is intended to protect him in contracting with one more powerful, but in this case I think this protection is illusory and the mischief very real.

"As regards the motion before us and the question of re-publication, I will only say that I regard the kernel of the Bill as sound, and the general object and scope of it as salutary, and that it should be proceeded with and necessary amendments made in Council. The recent modifications have been in the direction of meeting just objections of the zamíndárs, and I am not aware that any new matter has been introduced into it which would call for re-publication. In considering the desirability of future delay the possibility of agitation among the raiyats should not be lost sight of.

"The hour is late, and I will reserve the remarks I have to make on various other sections for the Motions to amend those sections, which are very numerous."

The Council adjourned to Monday, the 2nd March, 1885.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Monday, the 2nd March, 1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble SIR STUART BAYLEY'S Motion that the Reports of Select Committee on the Bill be taken into consideration was resumed this day.

The Hon'ble MR. GOODRICH said:—"It is right that I should, however briefly, express my opinion on the two questions to which each member of the Council must presently reply in the affirmative or negative.

"In the first place, the necessity of immediate regulation by law of the relations between landlord and tenant seems proved. In the second place, the Bill in question will limit the landlord's rights no further than the public interest demands.

"My assent to the second proposition is, like the adhesion to the report of most of the members of the Select Committee, given subject to some reservations which I will briefly indicate.

"In the first place, the public interests will suffer if an improving landlord be not permitted to bar for a term of 30 years his tenants on land which he has reclaimed from beginning to acquire occupancy-rights therein. Mr. Hunter's amendment will meet this case, and will increase the chance of capital being applied to land.

"Under this Bill the enhancement of rent seems not permissible, on the ground that land let to a raiyat as *rural* land may have become *suburban* by the rise of a centre of commerce or industry, such as a new railway-junction, port, coal-mine or factory. Such cases will arise, and the landlord ought to be able to enhance on lands which, when let, were far from any market, but which have

acquired a fancy value as accommodation-land by proximity to a new centre of population.

"The partial denial of the tenant's competency to contract must affect interests in various ways, not all perhaps now foreseen; but a practical consequence of the denial of the right to agree to an enhancement of more than two annas, excepting by suit, will be the infliction of the costs of a great mass of litigation upon the raiyats. I speak as one who has been Settlement-officer or Collector for the last 14 years, and can assure the Council that if the condition of the estate of zamíndárs resembles that of Government estates and of zamíndári estates in the Northern Districts of Madras, enquiry, such as Government, when landlord, everywhere asserts its right to conduct, will bring to light instances of lands fraudulently under-rated in almost every village.

"These questions will no doubt be fully discussed when the amendments to section 30 of the Bill are under consideration.

"I do not see any complaint from landlords on the score of the want of provisions empowering them to expropriate on terms assessed by a panchâyat occupancy-raiyats holding lands which the landlord needs for the execution of improvements, or for the erection of buildings or extension of premises which may be needed for the industrial development of his estate, or for necessary use in the working of mines or quarries. I think a prudent landlord would desire to possess this power. The State where it is landlord enjoys it, and it is for the public interest that it should be given to the landlord under due safeguard. Whether the landlord should be allowed to do as the State is doing, and take up land needed for fuel and timber reserves, paying of course compensation to evicted tenants, is a somewhat larger question; if it has been raised in the course of the Committee's enquiry, I have missed it.

"Permit me, my Lord, to add that the value of the patient and well-directed labours of the Committee have been fully recognized in *Southern* India."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"After the very gratifying testimony which the hon'ble member in charge of the Bill has borne to the value of my humble labours in the Select Committee, it would be ungracious in me to view with indifference the impatience expressed by the hon'ble member in the concluding part of his speech with any proposal for a postponement of the immediate passing of the Bill. But I should be lacking in the duty which I owe as a responsible member of Your Lordship's Legislative Council, and the duty which I owe to my countrymen, if I hesitated to beg Your Excellency and this hon'ble Council to pause before taking up the amended Bill for consideration for the purpose of passing it. Reserving to myself therefore the right of making a substantive motion on the subject, if necessary, I submit in the interests of all concerned that the amended Tenancy Bill should not be taken up for consideration by this hon'ble Council on the present motion of the hon'ble member in charge of the Bill. It is necessary to allow sufficient time to hon'ble members for studying the Bill, and the voluminous literature on the subject, before the Council might be expected to give to a discussion of its different provisions that intelligent consideration which its importance deserves, and also sufficient time to the public and to the parties interested for submitting their views and criticisms on the measure. The Bill has undergone considerable modifications since the Preliminary Report of the Select Committee was submitted last year; so many as 45 sections have been expunged, 13 new sections have been added, 21 sections have been thoroughly re-cast, and large modifications, both verbal and material, have been made in a number of other sections. The changes made in the Bill affect questions of paramount importance, and it cannot be expected that hon'ble members have been able in barely a fortnight's time to master the details of the revised Bill, and to judge of the justice and expediency of the various additions, omissions and modifications, considered by themselves and with reference to their bearings on the general scheme of legislation. This fact must have forcibly

pressed itself upon Your Lordship's attention at the last sitting of the Council, when an hon'ble member, himself an eminent lawyer and the ornament of his profession, entertained serious doubts as to the correct meaning of the provision about enhancements of rent by registered contract, and put upon it a meaning contrary to that given to it by the hon'ble member in charge of the Bill. The time usually given to the gestation and maturation of important legislative measures is never thrown away. Considering that a much less important measure, the Transfer of Property Act, was before this hon'ble Council for full five years before it was passed in 1882, that there are even now three Bills, one to amend the law relating to Court-fees, the other to amend the law relating to Civil Courts, and the third to declare the extent of testamentary powers of Hindus and Bhuddists, which have been before the Council since 1881, I feel confident that hon'ble members will not grudge the time required to bring to a satisfactory termination a measure which immeasureably exceeds in importance any of these other measures, and which will, for weal or for woe, affect the destinies of more than 50 millions of the people of these provinces. The necessity of giving hon'ble members and the public further time for the consideration of the revised Bill is the greater as it proceeds on lines very different to those on which the Bill was modified and presented to the public last year; and nothing shows this more clearly than the Report of the Select Committee and the Dissents recorded by a large majority of the hon'ble members who sat on that Committee. Exception has been taken to the revised Bill on the ground that the rights it confers on non-occupancy-raiyats would practically convert them into occupancy-raiyats, that the restrictions it imposes on enhancement of rent would virtually make enhancement of rent more visionary than real, and that the power it gives the Local Government to order wholesale reductions of rent on grounds other than those mentioned in the Bill was opposed to the assurance given by Government when the Bill was introduced in Council that the *status quo* was not to be disturbed; while, on the other hand, it has been alleged that the Select Committee have omitted or materially modified several provisions which formed the keystone of the original scheme, and that the present outcome is scarcely a settlement of the many important questions relating to the law of landlord and tenant. In the face of such radical alterations in the Bill, it is due to those whose interests would be so greatly affected by the measure that they should be allowed an opportunity of examining the Bill in its present form, and of submitting to your Excellency in Council their views regarding it. It is for the observance of no technical form of procedure that I presume to make this proposal. The recommendation made by the Select Committee, that the revised Bill should not be re-published—a recommendation, by the way, which is wholly incompatible with the Report itself—amounts to a virtual denial to the people of a privilege which they have enjoyed since 1862—the privilege, namely, of being allowed an opportunity of submitting to Government their views and wishes regarding a legislative measure which vitally affects their interests. The question engaged the attention of Your Lordship's illustrious predecessor, and His Lordship, in communicating his views to the Government of Bengal through the Secretary in the Legislative Department, observed: 'He (the Governor General) is on the contrary, fully sensible that it is the duty of the Government to give the largest practicable amount of publicity to legislative proceedings, and to afford the public every opportunity of examining them and expressing an opinion upon them, and he is satisfied that more can be done in this respect than is done at present.' But only a very limited publicity will have been given to it if the revised Bill be not translated in the different vernacular languages and published in the local Gazettes. Although the present measure is unquestionably the most important scheme of legislation that has come before this hon'ble Council since its establishment, a vast majority of the landholders and the whole body of raiyats will have no opportunity given them of examining the provisions of the revised Bill and offering their opinions upon them. In the face of the provisions contained in Bill No. II, the changes made in the sections regarding tenures and registration of transfers of tenures, the new limitations imposed upon enhancement of rent in Court and out of Court, the additional protection given to subletting, the power given to the Local Government to order a reduction of existing rents in certain

cases on grounds other than those recognised by law, the new section regarding contracts and a number of other provisions would come as a surprise upon most landholders if the Bill be not re-published; while the raiyats would discover with disappointment that the long-promised provisions for attaching to land a legal status independent of the length of possession of the holder, for a free sale and mortgage of occupancy holdings and for village tables-of-rates defining the maximum limits beyond which there could be no enhancement of rent, find no place therein. Your Lordship is well aware that the progress of the Bill is watched with the greatest anxiety and interest by all classes connected with the land in these provinces. Memorials adopted in crowded meetings of raiyats have poured in from different parts of the country, expressing their greatest consternation at the provisions for survey and record-of-rights and other sections of the Bill. They have even made bold to submit that, although actuated by the best intentions, the legislature, in its ignorance of their actual condition and relations with their landlords, will cause their ruin by the measure which it purposes to give them. Petitions have likewise poured in from landholders assembled at meetings in different parts of these provinces, submitting that there is no necessity whatever for substantive changes in the law on the lines on which the Bill has been drafted, that the Bill makes inroads upon vested rights of property guaranteed by law, and respected by preceding Administrations for nearly a century, that most of them have come to the possession of estates by purchase for large and valuable considerations, and that the proposed measure would, therefore, impose upon them, to use the words of John Stuart Mill, 'a penalty for having worked harder and saved more than their neighbours.' The landholders have repeatedly implored Your Lordship and Your Lordship's illustrious predecessor, with a persistency which has its apology only in the strength and sincerity of their convictions, to satisfy yourselves by the strictest enquiry that they have used with the greatest moderation their powers of eviction and settlement of rent, and that the condition of the raiyats in these provinces is one of growing prosperity. They have gone farther At a meeting held at the Town Hall on the 29th of December, 1883, perhaps the largest, certainly the most influential, ever held in this city, they unanimously carried a resolution which I shall read to your Lordship: 'That if the deprivation of the landholders of their just rights, inherited from generation to generation, confirmed by the Permanent Settlement, and consecrated by a century of British rule, be deemed essential to the welfare of the tenantry, the Government be solicited to consider the justice of allowing the zamíndárs to surrender their estates on receiving such compensation in money as will, when invested in Government securities, produce a permanent return equal to their present income.' In compliance with that resolution they submitted a memorial to the Government of India. Could anything indicate more strongly their sense of the injustice involved in the measure and their feelings towards it? Your Lordship will be pleased to see that the landholders of Bengal and Behar, numbering among them those whose manorial possessions date from days long anterior to the date of the Muhammadan conquest, have come forward in a body with a memorial declaring their readiness to forego the allurements of their position and social consideration, and to forego all hopes of future profit, and praying the Government of India to be allowed to surrender their estates in return for such security in money which would bring them their present income. It is not, however, the parties interested in the measure who alone consider the proposed changes in the present land law wholly unnecessary and altogether unsuited to the country. The hon'ble the Chief Justice of Bengal has, with the authority due to his eminent position, declared that he sees no 'such necessity as justifies the Government of Bengal in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the new Rent Bill.' And, again:—'It seems to me inconsistent with the good faith of the British nation, which the Native community have hitherto had reason to respect, to deprive the zamíndárs of the rights and position which they have acquired under the Permanent Settlement.' No less defined is the opinion of the hon'ble Justice Field, who by his masterly Digest of the Rent Law, the prominent part he took in the labours of the Rent Commission, and the pre-Raphaelite minuteness with which he has delineated the land systems of different countries

in his admirable work, has established a claim to speak with the highest authority on the subject. He says:—'I think we ought not to interfere with existing rights which have been the creation of our own administration operating upon the natural progress of the country. I think that no case has been made out for disturbing the landmarks of property. It must be borne in mind, as I have more than once pointed out, that a large proportion of the present proprietors are *bonâ fide* purchasers for valuable consideration, men who have paid their money for property sold at revenue sales, and in execution of the decrees of the Civil Courts, upon the faith of the existing state of things and the rights created by our laws and by our own action or inaction.' Other high officers of State have also denied the necessity of the measure now before this hon'ble Council. When the very necessity of the measure is denied by trusted and responsible officers of Government, the desirability of re-publishing the Bill with a view of giving the public and the parties interested an opportunity of examining the material modifications made in it by the Select Committee becomes imperative. The only argument that has been advanced by the Government of Bengal and by the hon'ble Member in charge of the Bill in favour of hurrying it forward through the Council is one based on the desirability of setting at rest the unsettled condition of the public mind on this question, and of preventing the further growth of expectations in the minds of raiyats which are not destined to be realised. But where is the urgency of passing a measure which, to use His Honour the Lieutenant-Governor's own words contained in his dissent, 'inadequately meets the necessities of the case which called for legislation,' and which is scarcely 'a final settlement of the many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' The cause of this unsatisfactory termination of the labours of the Select Committee is not far to seek. Government have undertaken to make extensive amendments in the land laws of the country without having at their disposal facts and figures which alone could have shown whether they are necessary. I cannot more graphically describe the ignorance which prevails on the subject than in His Honour's own words. Speaking from his presidential chair at a meeting of the Bengal Council on the necessity of a patwarí law, His Honour is reported to have said:—'The object of the Bill is to get at the facts connected with the agricultural economy of the country. For the last ninety years we have been endeavouring without any success to arrive at these facts. Everybody complains; those who have been discussing the Rent Bill for the last six or seven years complain; gentlemen who come to India to make enquiries about it complain; the zamíndárs themselves, and the raiyats, if they could speak, also admit that neither the Government nor the zamíndár nor the raiyats have any positive knowledge of the facts which exist in regard to their relations to one another as regards their own property.' The argument based on what are called the necessities of the case falls, therefore, to the ground. Is then the present law so very defective as to call for immediate action on the part of this hon'ble Council, notwithstanding the numerous modifications made by the Select Committee? I shall answer the question by reading to Your Lordship a statement from the despatch of the Government of India to Her Majesty's Secretary of State: 'A great part of the evils we describe,' they said, 'is unquestionably due to defects in administration rather than to defects in the law.' I lay the greatest stress on this statement as one which conclusively shows that there is no necessity whatever for passing the amended Bill without giving it due publicity beforehand.

"I would beg Your Lordship to view the question in another light. The Bill, as amended by the Select Committee, differs widely from the scheme of legislation submitted to Her Majesty's Secretary of State for India by the Government of India, and from the scheme which received the sanction of His Lordship. The scheme of the Government of India was summarised in 13 proposals mentioned in paragraph 108 of their despatch, which, with Your Lordship's permission, I shall examine shortly *seriatim*. The first was—'To restore the great body of the raiyats of Bengal to the position which they held under the ancient land law and custom of the country.' But, far from giving the raiyats the benefits of the ancient land laws, the Bill contemplates the repeal of

the very sections of Regulation VIII of 1793 which define the relative rights of landholders and raiyats under the Permanent Settlement, and as regards customs no attempt whatever has been made to ascertain their nature and scope, or to formulate them into statutory provisions. The second proposal was—'To effect this restoration by declaring that the occupancy-right, carrying with it the privilege of a legal rent, shall attach to all raiyati land, and shall be enjoyed by all settled raiyats, nomad raiyats and under-raiyats being excluded.' The section of the Bill which contained this provision has been expunged, evidently in deference to the opinion of Her Majesty's Secretary of State. The third proposal was—'To accept the proposals of the Lieutenant-Governor for the re-establishment, rectification and enforcement of the parganá rates, subject to certain modifications, of which the chief relate to the framing of principles of assessment, to the securing the benefit of improvements to those who make them, to avoiding class restrictions in respect to the enhancement of rent, and to permitting applications in certain cases for a complete settlement of estates.' The Bill contains no provision whatever for the re-establishment of parganá rates, and the provisions permitting application for settlement of estates form part of the chapter on survey and record-of-rights. The 4th proposal was—'To empower the Local Government to maintain the Collector's tables of rates for periods extending from 10 to 30 years.' The provisions embodying this proposal have been expunged from the Bill. The 5th proposal was—'To declare that no contract shall debar a raiyat from acquiring a right of occupancy in raiyati land.' But, instead of restricting freedom of contract in one particular, the Bill provides for such restrictions in 13 different particulars. The 6th proposal was—'To render the occupancy-right transferable, not, indeed, by summary sale without decree, but by sale in execution of decree and by private sale.' This has been abandoned, and the matter left to custom as at present. The 7th proposal was—'Except as above, to impose no restriction on the mortgage of the right.' This also has been abandoned. The 8th proposal was—'To secure to occupancy and other raiyats due compensation for their improvements.' This I find is the first proposal to which due effect has been given in the Bill. The 9th proposal was—'To reserve to the Government the fullest power of interposition to prevent the growth of a pauperised cottier class.' This refers to the evils which might be brought about by the transfer of raiyati holdings by sale or mortgage to landjobbers or moneylenders, and is therefore a mere corollary of the proposal regarding transfer of occupancy-holdings which has been abandoned. The 10th proposal was—'To discourage subletting by certain expedients, of which the most important is a limitation of the amount of rent recoverable from under-raiyats.' The provisions of the amended Bill, on the contrary, would encourage subletting and give great protection to sub-lessees. The 11th proposal was—'To provide for the more speedy realization of arrears of rent, when the rates are undisputed, by a modified method of distraint and an abbreviated procedure, as recommended by the Lieutenant-Governor of Bengal.' No summary procedure whatever for the speedy realization of rent has been given, and the institution of distraint has been virtually abolished. Instead of giving facilities for the recovery of rent, the Bill will immensely add to the difficulties of the landholders in this respect. It provides for meddling with the simplest transactions between the landlord and tenant, and makes a reference to the Courts and Revenue-officers obligatory for the ultimate regulation of every bargain relating to land; and whereas the present law provides for the aid of executive officers for only a single purpose, namely, measurement of land, there are more than 50 sections in the amended Bill which provide for executive interference on the part either of the Local Government or of their Revenue-officers. The inevitable effect of such provisions would be to annihilate the landholder's prestige in his estate, and thereby throw insuperable obstacles in the way of his recovering his rents. I shall read to Your Lordship in this connection the statements made before the Parliamentary Committee in 1832 by one who has denounced the wisdom of the Permanent Settlement in no measured terms—I mean James Mill. He says—'To draw from the raiyats the duties or contributions which they owe is well known to be a business of great detail and difficulty, requiring the strictest vigilance and most minute and persevering applications. Anything

which strikes at the credit of the zamíndár, farmer or other functionary by which this duty is performed immediately increases the difficulty by encouraging the raiyat in the hope of defeating the demand by evasions, cunning, obstinacy or delay.' The 12th proposal was 'To authorise remissions or suspensions of rent where there has been a remission or suspension of land-revenue.' The Bill contains no such provision. The 13th and last proposal was—'To take up the question of introducing throughout Bengal the system of village records and field surveys, commencing with the Patna Division.' And this is the second out of 13 proposals which has been fully embodied in the amended Bill, although it was one the difficulties attending the carrying out of which were clearly pointed out by Her Majesty's Secretary of State. The amended Bill, therefore, is in many important particulars at variance with the proposals which, with modifications in only one material point, received the sanction of Her Majesty's Secretary of State. Whether under such circumstances Your Lordship would consider it desirable to submit the amended Bill for the consideration of Her Majesty's Secretary of State for India is a question which it is for Your Lordship alone to decide, but I beg leave to submit that that question acquires additional importance from the fact that the land holders of Bengal and Behar took express exception to the correctness of the statements of fact and law contained in the despatch of the Government of India on which the sanction of Her Majesty's Secretary of State to the introduction of the Bill in Council was based. That despatch assumed that 'the right of Government to fix at its own discretion the amounts of the rents upon the lands of the zamíndárs had never been denied or disputed,' whereas such a right is not only disputed, but it was distinctly disproved by the researches of Sir John Shore and disclaimed by the authors of the Permanent Settlement. The despatch declared that the rights of raiyats were not ascertained and defined at the time of the Permanent Settlement, whereas it is well known that those rights formed the subject of a searching enquiry for 20 years before the settlement was made, and that they were clearly defined in Regulation VIII of 1793. It gave extracts from the evidence of Holt Mackenzie before the Parliamentary Committee of 1832, showing the desirability of legislation on the subject of tenant-rights, but it ignored the important statement made by him that 'if done without their (zamíndárs') consent, we must, I apprehend, interfere by a new law, and be prepared to give the zamíndárs compensation or allow a reduction of revenue.' It declared that before 1859 the zamíndárs had no right to enhance rents, on the grounds of rise in price of produce, and that the institution of distraint was an offshoot of the Regulations—statements which require no formal refutation. These and other statements formed the subject of a memorial, dated the 17th of November, 1883, by the landholders of Bengal and Behar to Her Majesty's Secretary of State; and His Lordship was pleased to observe, with reference thereto, that he 'can find nothing therein which would justify his assenting to its prayer that further legislative proceedings in connexion with the Bill should be stayed in order to enable him to re-consider the principles on which the Bill has been framed.' His Lordship adds that 'the most careful attention be given to the arguments of the memorialists when he receives *the Bill as finally settled*.' Your Lordship is well aware that as soon as a Bill has been passed by this hon'ble Council and has received the assent of Your Lordship, it ceases to be a Bill, and becomes, to use the language of the Indian Councils' Act, 'a Law or Regulation' notwithstanding the power of disallowance vested in Her Majesty's Secretary of State. The concluding portion, therefore, of His Lordship's remarks has raised a hope in the minds of the landholders that, before the Bill is taken up by this hon'ble Council for the purpose of passing, it would be sent to Her Majesty's Secretary of State for his consideration. Whatever foundation there might be for such a hope, I earnestly entreat Your Lordship and this Honourable Council to order a re-publication of the Bill before it is taken up for consideration, and that Your Lordship will not press forward, without further and due publicity, a measure which is at utter variance with the scheme which was sent up to Her Majesty's Secretary of State and with the instructions contained in the despatch of the Secretary of State, which the landholders look upon as a measure which in the absence of any necessity makes serious inroads upon vested rights of property, which the raiyats themselves regard with great consternation, and which landholders and raiyats

alike, and not a few of the responsible officers of State, regard as a measure possessing a much greater claim than any other measure that could be devised to the title of 'A Bill for the promotion of litigation in Bengal and Behar.'"

The Hon'ble RAO SAHEB VISHVANATHA NARAYAN MANDLIK said:—"My Lord, in this matter I propose to follow a moderate course, as I think it will be the best under the circumstances; for this I have my reasons, which I now propose to give. The Bill, together with the Select Committee's Report, as well as the dissents, have now been before us for two weeks, and a comparative study thereof, along with the Bill in its previous stages, has been a task of very great difficulty to me. The cause of this may be partly seen from the review that has been just submitted by the Hon'ble Sir Steuart Bayley. The hon'ble members who have followed him have had, with one exception, the advantage of being on the Select Committee for more than a year. If my remarks appear, therefore, somewhat cursory and disconnected, that circumstance arises from the necessities of the case. The mass of district papers, unindexed, has to be looked into each time from a differently placed standpoint. This is, however, not my only difficulty. Questions of principle have been introduced into the discussion in the Committee, and by different members of the Committee in their dissents; and they also arise in the papers circulated to the members of this Council and in the speeches of my hon'ble colleagues who have preceded me. In justice, therefore to myself, and to the Government of India, whom I am bound to help with such little light as I may be able to throw on the subject, and to their officers, who have worked hard to give their opinions as well as a variety of information about their respective districts, I must dwell for a few moments on the whole matter now before us.

"The legislature of India can only follow a safe and sound course. The question now before us directly affects 58 out of 217, or more than a fourth, of the revenue or judicial districts of British India, and indirectly about twice as many more. The Permanent Settlement is not in question now, and cannot be. I know, my Lord, I am here treading on delicate ground. But I have my views on the subject, and the Government of India has now finally approved of the principle. The Permanent Settlement is the sheet-anchor of the Government and the people, and we hope that when all the conditions are fulfilled (be it two, or be it three, conditions), it will be introduced in its own time throughout the empire as the best political and economical measure that can be devised. Neither party to this present contest refer to it, except as a means of getting rid of their own difficulties. I allude to it now, because it has been introduced into the discussions both here and outside, and because these discussions have caused unrest for which I see no sufficient cause and which ought not to be lightly indulged in.

"The brief history of the present Bill may be thus given. In 1859 the Occupancy Act was passed, recognising heritable but untransferable occupancy-right under certain circumstances. This was repealed in 1869 by a Bengal Council Act. Still the rent difficulty was not overcome. Zamíndárs could not recover rents. This was admitted by the Government of Bengal and by the Government of India in 1877-78. How is this got over? This is what the Divisional Commissioners say. The Commissioner for the Presidency Division says the zamíndárs had 'a good right to expect a very much more substantial relief' in regard to the recovery of rents. He holds that the Bill, if passed into law, is not likely to end in a satisfactory solution of the questions at issue. The Burdwan Commissioner is opposed in a manner more pronounced; so are those of Dacca and Chittagong; the latter would urge the non-extension of the measure to his district. The Commissioner of the Rajshahye Division is altogether opposed to the Bill, and thinks that while the raiyats of Bengal have been the stronger, and the Lieutenant-Governor in 1877 thought that a Bill for the proper recovery of rents was required, something else which was not then considered necessary has taken the place of the Rent Bill. He shows that rent-suits have increased by the grant of occupancy-rights, presumably to improvi-

dent people. This he shows by extracts from the report of the Deputy Commissioner of Darjeeling, formerly District Judge, &c., in the Sonthal Parganás.[a]

"Again, the Board of Revenue consider that the rents are lower than what they were in the beginning of the last century. And this would rather indicate that we must look chiefly to a good rent-recovery law, abolition of illegal levies, and the partition of all partible properties for our help.

"In face of these facts, it is hard to say that the present Bill does provide additional facilities for the recovery of rents on which the payment of the *jamá* depends, and which was asked for and promised. After having studied the matter, I must say that to me the natural solution of rent difficulties appears to be the amendment of Act X of 1859 and not its repeal. We ought to have had complete statistics placed before us. I do not now advocate taking additional evidence. The reasons for this will be seen from my subsequent remarks. I know the Government of Bengal complain (letter dated 27th September, 1883),' it is a misfortune that Bengal is so absolutely destitute of a record-of-rights.' And the hope is there expressed that 'when such record is established disputes will be impossible.' I regret I cannot join in the expression of the latter hope. Disputes do not depend on the mere character of public records. Their causes are deeper and varied, and I may say that the greater the complexity of legislation, the pressure of population on the means of subsistence, and, in some measure, the advance of modern civilisation itself, the larger will be the quantity of litigation. Historical experience completely supports me in this position. But my present complaint is of a more practical character, and relates to matters like eviction, distraint and others which we shall soon have to consider when going into detail. And the complaint is based upon the existence of the present law beginning from Regulation VIII of 1800 and coming up to Bengal Act VII of 1876. These laws were passed for securing some such statistics; and we ought to have máuzawár or village registers, and parganáwár or district registers, prepared under them. They would have given a large quantity of information about all the lands in each district, their situations, dimensions, holders and other particulars. From these, valuable information about the state of the people could have been gathered. I extract a specimen from the papers handed up by the Commissioner of the Patna Division, which show that within the last 80 years in the Gya district each estate has been split up into six and even more portions, and the number of proprietors has increased from 18 to 24-fold.[b]

[a] Mr. Oldham estimates that about 80 per cent. of the civil suits in the Sonthal Parganás are instituted by money-lenders to recover advances made to raiyats, a large majority of whom have occupancy-rights, and the following figures for the year 1883 compare litigation in the three districts just mentioned:—

District.	Population.	Number of civil suits instituted.	Number of civil executions of decree instituted.
Sonthal Parganás	1,568,093	7,351	4,253
Dinagepore	1,514,346	5,188	2,518
Rajshahye	1,338,638	2,674	1,930

Further on, he observes—

"I have no figures showing the number of civil suits in the Sonthal Parganás before such provisions as those in the Bill were introduced, but Mr. Oldham's statement that they greatly increase litigation seems sufficient.

"Lastly, Messrs. Livesay, Newbery, Ruddock, Dalton and Tute, and I would point to the following figures for 1883 as showing that litigation for the recovery of rent has not been decreased by the provisions of the Bill, though Mr. Oldham here again thinks that without transferability there would not be nearly so many rent-suits, as fewer money-lenders who quarrel with the zamindárs would become occupancy-raiyats:—

District.	Number of rent-suits instituted.	Number of rent executions instituted.
Sonthal Parganás	3,892	2,805
Dinagepore	3,102	1,620
Rajshahye	1,978	863"

[b] *Extract from enclosure of Commissioner's Report No. 484 R., dated 7th July, 1883, page 11 (note).*

"In the 24-Parganás, which are now comprised in the district of Gya, the total number of estates in 1789 was 744, and the number of proprietors 1,160; in 1871 the number of estates was 4,411 and the number of registered proprietors 26,453. In 80 years, therefore, each estate has, on a average, been split up into six, and, where there was formerly one proprietor, there are now 18 (Statistical Reporter, Volume XII, page 126). In 1789, there were 1,232 separate estates on the rent-roll of the Patna district, as then constituted, held by 1,280 registered proprietors. Including a net total of 727 new estates obtained by transfer from the Gya district, the number of estates on the rent-roll of the district amounted in 1870-71 to 6,075. The number of registered proprietors had increased to 37,800. Allowing for the increase in the size of the district by the addition of the Behar sub-division, the number of estates under the Patna collectorate had quadrupled since the original assessment in 1789; and where there was formerly one proprietor, there are now probably 20 (Statistical Reporter, Volume XI, page 187). In the district of Tirhoot the figures are more marked. In 1790 there were 1,321 estates held by 1,959 registered proprietors. In 1871 the number of estates was 11,500 and the number of registered proprietors 73,416 (Statistical Reporter, Volume XIII, page 168). So long ago as 1789 Mr. Shore remarked on the insignificant size of the Behar estates and the poverty of their owners. If subdivision has gone on thus rapidly with estates, it is hard to expect a different state of things in case of transferable occupancy-holdings."

"This is one example in regard to the case of the proprietors as the one I gave before is in regard to occupancy-tenants. As a very considerable number of these are said to exist in Bengal, such information would have cleared up many difficulties in regard to recovery of rent and other matters. None of the dissents, so far as I can see, supplies any help in this direction. All zamíndárs could supply statistics, and ought, I think, to have been called upon to do so.

"Turning, therefore, necessarily to the divisional reports, the state of matters is not quite reassuring. Some officers would rather work the present law more strictly and stop the illegal ábwábs. Others think the new law not at all necessary, and have proposed a provision empowering the Local Government to introduce it into any locality at its discretion.

"As far as I have been able to gather, the Commissioners oppose the Bill, first, as unnecessary, and as going beyond the necessities of the case; and secondly, because it will not produce the results anticipated, but will injure vast interests without any compensating public good, and end in injurious litigation to the detriment of all parties. Some Collectors would have a moderate Bill. Such being the state of matters, I am sorry I am not able to follow the line taken up by those hon'ble colleagues who complain of the present Bill as not conceding all they claim for the tenants. The evidence of the District Officers is quite the other way, and I think it should not be set aside except on very strong grounds sufficient to override their weighty representations. His Honour the Lieutenant-Governor has a fourfold complaint against the Bill. The Hon'ble Mr. Reynolds thinks that, if anything, this is a law which cannot last long. The Hon'ble Mr. Amír Alí is also dissatisfied for the non-extension of occupancy-rights to classes who the district authorities think are not generally entitled to them; while the Hon'ble Mr. Gibbon thinks that complete transferability ought to have been enacted instead of its being left to Courts and custom. Again, I see a demand made in some quarters for what is called spirited legislation. To persons who ask for such legislation I again refer to the valuable reports of our district authorities. These are entirely opposed to such a course. Indeed, it seems to me that those who advocate such a course are hardly aware of the gravity of the occasion or the seriousness of results Social and economic changes, to be stable, must be slow, and must come from within. Does the evidence before us warrant such a proceeding? I am bound to say no. I would rather that the energy wasted on such attempts at seeking spirited legislation were more usefully employed in training cultivators, say, over given areas, to be more hard-working, self-reliant, truthful, God-fearing men. Their example would be more efficacious than a cart-load of invectives against vested interest of any kind, and will certainly produce a moral revolution which the Government above all others would be the first to recognize.

"The Government of India, in the Irrigation papers published in October, 1871, lay down a well-known caution in regard to the evils produced by periodic settlements. The principles which underlie those observations (*vide* Minute of Lord Mayo and other papers) appear to be that frequent interference in the private affairs of the people must produce evil. Here, on the contrary, the call upon the Government seems to be not to desist, but to come and interfere on almost every conceivable occasion, either through the Revenue or the Judicial Department. Nothing is to be settled, it would seem, out of Court and by private agency. I am sorry to see the unqalified assertion of such a principle. The Hon'ble Mr. Evans has already drawn attention to it, and I hope some substantial improvement may yet be made in this matter during the progress of the Bill.

"Again, the divisional authorities speak of considerable increase of establishments as one of the inevitable results of this legislation. Thus, in regard to Division Chittagong, the Commissioner says that litigation has increased since the last Act, and the tenants are evidently no better (see tables previously quoted). Evidently more complicated provisions will necessitate new establishments. In Rajshahye the new provision as to deposit of rents will require new establishments. In the Dacca Division, the demarcation of khámár lands (which is considered objectionable there and elsewhere), will require heavy establishments. Dacca, my Lord, is in East Bengal, of the character of whose people the

Hon'ble Mr. Evans has told us at the last meeting, and you may usefully consult the records.

"Taking yet another view of the case, our colleagues, the Hon'ble the Maháráját of Durbhunga and the Hon'ble Peári Mohan Mukerji, are both dissatisfied with the whole work, and I believe it is now clear that the measure is not suited to the circumstances of Behar. Will it benefit Bengal? I fear the evidence before me does not permit of my giving an unqualified answer in the affirmative. As I have said before, the Local Government has not supplied us with such statistics as the present laws enjoin the keeping of. Were it feasible and useful at this stage, I should have agreed to receive further evidence. But we are not now experimenting on inert matter which obeys certain natural laws, and with which you can repeat your experiments almost regardless of time. Such a method of experiment is not applicable to the subject before us. The state of the parties affected is, no doubt, undergoing some change; and yet it cannot be said that it has gone on so long as to have produced new combinations which the district officers have not already reported upon. And there is a certain subordinate official agency to which I would not now refer for further reports. I shall briefly explain what I mean by this observation. Thus a subordinate officer in Bengal submits a report which to me is quite a curiosity. He allows two days only to respectable gentlemen in his subdivision to submit their opinions. His own report is simply ludicrous. He has gone through the Bill, which, he says, provides necessary safeguards against the zamindárs; he ventures to remark that more than sufficient privileges have been granted to the tenants; he would rather have seen a simple speedy mode of recovery of arrears and protection of tenants from illegal exactions and harassing enhancements. When saying this he forgets that he has already considered the Bill sufficient in these respects. As if, however, thinking he had been doing too much, he again condemns the Bill as tending to create multiplicity of intermediate tenures detrimental to actual cultivators of the soil, and as likely to prove of doubtful expediency and productive of litigation. Then comes the final touch. He says:—'*The Bill is a very complete one, and I am unable to offer any suggestion.*' The fact seems to be that the writer has no confidence in himself; how can he expect that others should confide in him?

"I am unable, my Lord, to say how the multiplication of such evidence will be of any value, and there are some more specimens of it on both sides. In fact, some raiyati petitioners in Orissa have already picked up a kind of phraseology which is scarcely parliamentary. I would, therefore, not be a party to ask for further evidence on this occasion. We cannot artificially isolate the subjects of our inquiry; and there have been no violent social or economic changes which can have altered the social and economical institutions of Bengal or the character of its people since the last district reports were framed within one year. If there were any such changes, the Local Government would doubtless have sent up all the materials to this Council.

"Pursuing the same subject and working at it from another point of view, we must see what we have really to do. The legislation of 1859, as amended in 1869, the proceedings of the Commission of 1881, and the discussions that have been now going on for three years, are all before us. And it seems to me the point that is being lost sight of is this. Are we now going to construe for the first time the Regulations of 1793, or those Regulations along with all amendments up to this date as viewed by the conduct of all the parties concerned, namely, the Government, the landed proprietors and the tenants? A good deal has been said on both sides in regard to customs, but I take it, as a rule sanctioned by high authority, that a custom cannot be acknowledged as a basis of legislative action unless it has been consciously acted upon by the people as a rule of their conduct in the practices of every-day life. Unless it is so, I fail to see on what foundation it is to stand, and unless it has a foundation I should be chary of accepting it as a guide. Mr. Longfield, in his paper on 'The Revenue of Land in Ireland,' printed in the collection of essays published under the sanction of the Cobden Club, gives the following criterion for judging

of property in land, and this I think may be safely taken as a guide in this discussion. He says:—

'The rights of the present owners do not depend upon the truth of any theory respecting the origin of proprietorial rights. It is a rule of natural justice that says that, if I encourage a stranger to buy from a wrongful owner property that is really mine, I cannot justly press my own claims against the purchaser. This is the case with land in every settled country. The present owners either themselves purchased the land or derived their rights under those who purchased it with the sanction of the community represented by the authority of the State. In many cases the State itself received part of the purchase-money from stamp-duties on the purchase-deeds.'

"Again, a high authority has laid down (Kent on American Law) that to complete the right to property the right to the thing and the possession of the thing must be united.

"What, then, are we now to do? I have tried to give a brief view of the Bill of 1883 taken by some of the leading officers who are in the same position as I am now, but who have the actual work of the administration on their hands, but I fear I have not done them justice for want of time. If we examine the Bill, we have to see what mischiefs it will suppress, and what remedies will be advanced by it. Viewed in this light, it seems to me that the *khudkásht* raiyat should have been allowed to remain undisturbed. *Khudkásht* is a well-known term, and, if necessary, its equivalent might have been simultaneously given, but neither the 'settled raiyat' nor the 'resident raiyat' supplies its place. *Khudkásht* contains its own definition, and its attributes have a well-known history of their own.

"In respect to another subject I have a few words for this occasion. Though the present is not, strictly speaking, a revenue law, it will indirectly affect the revenue administration of the country, and it occurs to me that now that the subject has been exhausted threadbare, there ought to be no artificial restrictions on the quantity of zamíndári or raiyatwári holdings. If nine-tenths of Bengal are now under cultivation, and the remaining tenth is waste, it cannot affect any tenant if the proprietors of that waste land were allowed to work it, or to sell it or to contract with lease-hold tenants so as to reduce it into cultivation. That they have allowed it to remain uncultivated is a circumstance that has contributed to their own loss. That it has not been put on their rent-roll is, I conceive, because no rent has been derived by letting it, either by *batai* or cash rates. It therefore could not appear as cultivated land, either in their own or the Government registers, but why should there be a legislative prohibition to the proprietor making it his *khás* land, which it substantially is, and still more why its reclamation should be clogged with unnecessary restrictions is what I cannot see. When this and such like arguments are urged, one is referred by the Bengal Government to customs of former Governments for power to do so. On proper occasion, nobody advocates the non-exercise of superintending powers by our own Government within constitutional limits. But I am supported by high authority in protesting against an improper application of such examples. A constitutional and well-administered Government like our own can hardly set up the effete administration of Bengal in the 18th century as a model before us to copy. The provisions which are themselves cited in another part of the paper in connection with a similar example were repealed as being *obsolete* so long ago as 1876. The process of comparison is therefore, I must say with great deference, logically vicious.

"If there was any fair scheme applicable to both sides allowing such land to be converted into raiyatwári holdings on a graduated scale to be agreed to on both sides, I should have been prepared to take such improvement as a good start and some tangible good might have been attempted. This portion of the Bill is not favourably reported upon in the district papers before us.

"In regard to homestead lands, I think, unless such lands are connected with the raiyat's agricultural land of the village, mere outsiders should not be allowed to hold them. This is, I believe, the customary law, and as the native community is situated, it is, I think, a salutary provision. Neither the landlord nor the cultivating raiyat should be permitted to dissociate the one from the other. Neighbours' quarrels in matters of adjoining lands are the worst

in any country, but when to other difficulties social and religious ones are added, the cup overflows to the detriment of the whole village community. I trust, therefore, that this subject, along with others, will be duly considered. The papers referring to Behar on this subject are important and deserve careful consideration.

"Another subject on which I am bound to express my opinion in this place is the restriction on the freedom of contracts generally. Over a wide country, containing 68 millions of inhabitants, the Government of India has doubtless had before it cases of localities or of a class or classes from which this liberty may, on due cause being shown, be sometimes withdrawn; and when we remember that under the infancy of the land law (and in several parts of the country the law as it stands now), does not permit of transfer of occupancy-holdings by contract, I may accept the present measure as a tentative solution of the difficulty so far as the tenants are concerned. But, on the other hand, with regard to waste lands on which nobody has settled, I should prefer all contracts being left free as heretofore, subject to the equitable jurisdiction of Courts of law. This view is also supported by the evidence of the district authorities. It occurs to me that while one side to this controversy would deny anything which will affect their rent-roll, the other cannot make up their minds to distinguish what is well known throughout India as *zamínitwa* or right of dominion and tenancy. I am bound to say here at once that I agree with neither. The Bengal Revenue-officers do not support such a contention. Why is the legislature to attempt to square the zamíndár to fit into some new imaginary official circle?

"There are some other matters of which proper notice may be taken when they come up for discussion. While the Bill enacts several new provisions of law of questionable utility, and which will increase not only the work of district officers, but introduce a larger interference of State agency into the private affairs of the people than is either necessary or desirable, no positive provision, as its seems to me, has been made for relieving large classes both of tenants and landholders, who I think ought to be relieved. It appears clear from the papers before us that sub-letting is the standing evil to which a large amount of the sufferings of the Bengal raiyat may fairly be attributed. This may be seen particularly by referring to paragraphs 14 to 17 of Mr. Cotton's memorandum, prepared for the President of the Select Committee on the Tenancy Bill, which, according to His Honour the Lieutenant-Governor, merits every attention, Mr. Cotton says:—

'In one respect, however, the cultivators of the soil undeniably are placed at a disadvantage by the practice of sub-letting, for it is a peculiarity of the system, although these tenures and under-tenures often comprise defined tracts of land, a common custom is to sublet certain aliquot shares of the whole superior tenure, and in consequence the tenants in any particular village of an estate are often required to pay their rents to two, or more than two, and often to many different, landlords.'

"Although, as Mr. Cotton remarks, following the historian Hallam, that such a result is by no means unnatural, still that it is not a necessary result may I think be safely inferred from the papers before us. Thus the report of the Officiating Collector of Shahabad in regard to *guzáshta* holdings is in this connection valuable as showing that in places like Bhojpur those who cultivate their own lands on these tenures are very well off. I know that it is not correct to generalise from limited data, because property both acts and is acted upon by those who hold it; but if it is intended, on proper occasions, to help the creation of small properties with distinct responsibilities and with provisions for actual sub-divisions amongst the sharers, I think opportunity may now be taken to enact some provisions which would be an improvement on the present state of things.

"As regards our present course I would have voted for temporary relief being given to places like Mymensingh and Dacca by passing special measures to meet their cases. There is enough of material before us to support such a course. But this I fear would now be impracticable. It is now nearly six or seven years that the subject has been before either the Government of Bengal or the Government of India, including the deliberations of this Council, and we

are given to understand that it will not conduce to the cause of good government if the matter be left in this state till the Council meets again here in December next. The Bengal Government as represented in this Council does not ask for delay in the minutes now before us, although those minutes do not accept the present Bill as a final settlement. The proprietory interest, as represented by the Hon'ble the Mahárájá of Durbhunga and Hon'ble Bábú Peárí Mohan, request re-publication, and if this were not a virtual postponement for a whole year I should have voted for that course. As it is, any extension of time which can conveniently be allowed to them may, I think, be granted; but if that cannot be, then I hope the Council will consider and discuss all that has to be said *pro* and *con.* for all the interests concerned are equal objects of conservation to the British Government. While I have given my reasons for the course I am going to adopt, I regret I am not disposed to concur in the remarks either here or outside in regard to the opposition of our zamíndár colleagues. The case of the Mahárájá of Durbhunga is as good as proved. If it were not, I still think both he and the Hon'ble Bábú Peárí Mohan are bound to state all their objections. The district authorities show what they will suffer, and it is quite natural they should feel it; and if they do, I think we ought to be glad to hear them. They are representatives of a very large and important class. I do not think that it will be just to tax the present landed proprietors of Bengal with the shortcomings, if any, of their predecessors, because I think the progress of legislation as well as the papers now before us make it pretty clear that on the whole they have done their work well. But now comes another agency into greater prominence, and with the light which is thrown on their condition from both sides, it is clear that neither has arrived at its goal.

"What then are we to do? The Bengal Government calls for immediate action. This is supported by the hon'ble member in charge, who I feel sure will not rush into any extreme course. A few of the district papers move on the same lines. Though not inclined in favour of the Bill of 1883, they counsel legislation under some of the heads laid down in the Bill on which they favour us with their remarks. My duty therefore is clear; that is to make the most of what we have and not to postpone for another year.

"My Lord, I have already taken more time than I had proposed to myself. I am quite sensible of the imperfections which there may be in my work, but I can assure Your Lordship and my colleagues that I have devoted more hours to it than one is usually credited with doing in this climate. If there are any sides of the question on which light can be thrown, nobody would be more glad to learn than myself, but I have a right to say that I have done my best under the circumstances, and having made these remarks I beg to say that I shall vote with the hon'ble member in charge for the further consideration of the Bill in detail."

The Hon'ble MR. REYNOLDS said:—"I desire to support the motion that the Council should now proceed to take this Bill into consideration. I do not mean by this to express my approval of all the provisions of the Bill. The dissent which I have recorded from the Report of the Select Committee is sufficient to show that in some particulars of great importance the Bill seems to me to fall far short of being an adequate or a satisfactory measure. But, in my opinion, the faults of the Bill lie mainly on the side of defect. It fails to supply any sufficient check on the improper exercise of the extensive powers which it puts into the hands of the landlords. It must be supplemented by further legislation for the protection and security of the tenant, and I have little doubt that the experience of a few years will show the necessity for such legislation to be imperative. Till that protection is afforded, I can only regard the Bill as a well-intended, but incomplete, measure; a measure to be praised rather for what it aims at, than for what it effects; a measure marking, it may be, a stage upon the journey, but leaving the country still a long distance from the desired goal. Holding these views, I still think that I can consistently vote in favour of the motion before the Council. If the principles which the Bill as originally introduced was intended to establish had been repudiated, or its objects had been formally abandoned, I should look upon the question in a very different light. In that case, instead of

voting to take the Bill into consideration, I might have been more disposed to vote for dropping it altogether. But the difference between myself and the hon'ble member in charge of the Bill is not of this serious character. It is a difference of degree, not a difference of kind. I do not understand that the hon'ble member has, in any way, receded from the position which he took up in his speech on the 13th of March, 1883, when the Bill was referred to the Select Committee. He apparently believes that the Bill in its present form redeems the pledges which were given when it was introduced, or at least that it goes as far in that direction as is justified by the evidence laid before the Select Committee. In this belief I do not agree, but this need not prevent my consenting to discuss the details of the Bill as an instalment of the legislation necessary to a final settlement of the question. An affirmative vote on this motion seems to me to imply that it is desirable to legislate upon the subject, and that the provisions of the amended Bill do not go beyond the limits of the power of interference which the Government reserved to itself at the settlement of 1793; and further, that the general lines upon which the Bill is drawn, and the objects at which it aims, are just and reasonable, and in accordance with the wants of the country. It seems to me that the Bill, insufficient as I consider it to be, does satisfy these conditions, and I am, therefore, prepared to assent to its being taken into consideration by the Council.

"I willingly and thankfully acknowledge that the Bill contains many valuable improvements upon the present law. It lays down principles to guide the Courts in determining whether a tenant is a tenure-holder or a raiyat: it provides a simple procedure for the registration of the transfer of tenures: it does something towards strengthening the position of the occupancy-raiyat: it simplifies and facilitates suits for the enhancement of rent: it establishes an admirable system for the commutation of rents payable in kind: it prescribes excellent rules for instalments, receipts and interest on arrears: it encourages improvements: and it protects the interests, both of the parties and the general public, in cases of disputes between co-sharers. The chapter on the preparation of a record-of-rights contains provisions which will be equally useful to landlords and to tenants. The sections on the record of private lands will put a stop to that illegal misappropriation of village lands as khámár which has been too often practised in Behar. The rules for the protection of sub-tenants when the interest of the superior holder is relinquished or transferred, the restrictions upon such contracts as are opposed to the objects of the law, the power given to apply for a judicial determination of the incidents of a tenancy—all these are, in my opinion, points in which the Bill applies useful and equitable remedies to evils for which the existing law does not adequately provide.

"It is therefore the more to be regretted that a measure which contains so much that is good should be marred by defects which not merely detract from its usefulness, but which may result in aggravating the mischief which the Bill is intended to counteract, and in turning what should be the raiyat's protecting shield into an instrument of exaction and oppression. The opportunity has again been afforded us which was neglected in 1793 and misused in 1859, the opportunity of placing the relations of landlord and tenant on a secure and permanent basis; of defining the rights and obligations of each; of ensuring, in accordance with immemorial usage, fixity of tenure at fair rents to all cultivators of the village lands; and of facilitating the landlord's recovery of his dues so long as he restricts his demands upon the tenant within equitable limits. It is to be feared that, once more, the opportunity will be suffered to pass by. This Bill, by confining the right of occupancy to the village in which the tenant has held land for 12 continuous years, fails to give the occupancy-raiyat that fixity of tenure to which he is justly entitled. The sections relating to the enhancement of an occupancy-raiyat's rent give the landlords a sure and speedy means of enhancing rents, without providing any sufficient check on the levy of further enhancements in those areas in which rents are already as high as the land can properly bear.

"If the protection given to the occupancy-raiyat is thus insufficient, the defects of the Bill, as regards the non-occupancy-raiyat, are still more conspicuous, and are likely to lead to results still more deplorable. The non-occu-

pancy-raiyat is entitled to full consideration at our hands, for he is really the offspring of our own legislation. We have been told time after time, by the landlords and their advocates, that the occupancy-raiyat is the creature of Act X of 1859. Never was a statement more inaccurate, or indeed more directly opposed to the fact. The occupancy-raiyat dates from a time whereof the memory of man runneth not to the contrary. But never till 1859 was it the law in Bengal, that a resident raiyat cultivating village lands to which he had been duly admitted, which he had held for ten or eleven years, and for which he was willing to pay the established rent, could be ejected from his holding at the pleasure of his landlord by a mere notice to quit. It is the non-occupancy-raiyat who is really the creature of Act X of 1859.

"The Bill not only does practically nothing for this class of tenants, but in some respects it puts them in a worse position than they occupy now. It was left to the Courts to deduce from Act X of 1859 the doctrine of the landlord's power to eject, and the deduction seems to have been made for the first time in 1874, but it is now proposed to embody in the Statute-book a distinct recognition of this power. Under the present law, the zamíndár can prevent the accrual of the right of occupancy by merely shifting the raiyat from one field to another: under the Bill, he will be tempted to evict him from the village altogether. A tenant so completely at the mercy of his landlord, must evidently submit to any demand of rent which the latter may think fit to make. Even if he is allowed to acquire a right of occupancy, he will only be permitted to do so on payment of an excessive rental: and, under the operation of the rule regarding the prevailing rate, this excessive rental will be used as a lever to raise the rents of all occupancy-raiyats in the village. The evil consequences of leaving the class of non-occupancy-raiyats unprotected were clearly foreseen and forcibly pointed out by the Government of India in its despatch of the 17th October, 1882, to the Secretary of State: and it is, therefore, a matter for surprise as well as for regret that the amended Bill leaves such raiyats practically without any protection either as to the amount of their rent or as to the security of their tenure of the land. The established principle referred to by the Court of Directors in 1792, as the maxim alike of the Moghul and of the British Governments, that 'the cultivator of the soil duly paying his rent should not be dispossessed of the land he occupies,' seems to have been lost sight of. In a previous passage of the same letter, the Court of Directors had plainly declared that the object of legislative interference by the Government between landlord and tenant should be 'to prevent the raiyats being improperly disturbed in their possession, or loaded with unwarrantable exactions.' But this Bill allows the raiyat to be ejected at the mere caprice of his landlord and it gives him no adequate security against the most exorbitant demands of rent. The extension of the right of occupancy to the great mass of settled cultivators has been put forward, time after time, by successive authorities as one of the principal objects at which legislation on the rent-question should aim. The Famine Commission and the Government of Bengal have urged, in language as strong as it is possible to use, the great importance of this extension: the Rent Commission proposed to give a qualified right after only three years' occupation: the Government of India, in 1882, went even further than this, and recommended that the right of occupancy should be declared inherent in the status of every cultivator of raiyati land. The hon'ble member in charge of the Bill is still prepared, I imagine, to maintain the principles laid down in that despatch to the Secretary of State. But I would ask him to consider what extension of the right of occupancy is to be looked for from a measure which leaves the landlords the fullest power to prevent its accrual over all lands in which it has not already been acquired, and over lands in which it now exists, but which may hereafter revert to the landlords by purchase, by death without heirs, or by abandonment by the occupancy-tenant. I would ask him to ponder the serious warning with which the 8th paragraph of that despatch concludes, that 'the old series of litigation, enhancement, and ejection will recommence; and in the course of another generation the percentage of land thus acquired will be sufficient to render necessary a re-opening of the whole question, and will inevitably involve fresh interference on the part of Government.' I would ask him to reflect that out of 67,578 occupancy-holdings

transferred by private sale during the past year, no less than 10,500, or about 25 per cent., were purchased by zamíndárs or traders: and then to say whether the warning conveyed in that paragraph is not likely to be more than justified by the working of this Bill.

"These, then, are the faults I find in the Bill: first, that though it puts the occupancy-raiyat in a stronger position than he now holds, it does not give him complete security of tenure: secondly, that it greatly increases the facilities for the enhancement of his rent, without laying down any ultimate limit beyond which enhancement is in no case to go: and thirdly, that the protection it gives the non-occupancy-raiyat is altogether inadequate. The hon'ble member in charge of the Bill, to whom I listened with the greatest admiration, and whose speech was equally distinguished by the lucidity of its statements and the fairness of its arguments, will not deny that in all these three particulars the Bill in its present form is a far weaker measure than the Bill which was referred to the Select Committee. He has contended, it is true, that the Bill is a much better measure than I have represented it to be. He noticed, in particular, the points of the settled raiyat, the prevailing rate, the gross-produce limit, and the position of the non-occupancy-raiyat; and on all these points I am willing to admit that he adduced reasons of considerable force in favour of those conclusions of the Select Committee which are embodied in the Bill. As the motion actually before us is merely the preliminary motion that the Bill should be taken into consideration, I do not desire to discuss these questions in detail on the present occasion. Each of them will come before the Council in connexion with amendments, of which notice has already been given. I will only say now that, whatever may be urged in support of the Select Committee's decision upon each of these points, what the Council has to look at is the effect of the Bill as a whole. There may have been unanswerable reasons for maintaining the prevailing rate, or for striking out the gross-produce limit, but the general result of the rejection of the proposals of the Bengal Government on these and other cognate matters has been, in my opinion, to leave the raiyat without adequate protection for his rights. And when the hon'ble member quotes me as an authority for the abandonment of the provisions for compensation for disturbance, I think it only fair to myself to point out that I objected to those provisions, because I thought compensation for disturbance an insufficient check. I thought it probable that the raiyat would not take his compensation and go, but would submit to the enhancement and remain. My objections are not disposed of by the removal of the check, without the substitution of anything more effective in its place. On the whole, I am not prepared to withdraw the opinion I have already expressed in my recorded dissent, that the Bill gives the landlords a power which is not sufficiently controlled or limited, and that the exercise of this power will naturally lead to results inconsistent with those rights of the tenants which the Bill was designed to maintain, and disastrous to the agricultural interests of the country.

"The nature of the further legislation, which will be necessary to supplement and complete this Bill, is a point upon which I do not propose to touch to-day. I shall have an opportunity of noticing it hereafter, when the motion for the passing of the Bill is submitted to the Council. At present, I desire only to make it clear that my assent to the proposal to take the Bill into consideration does not imply my acceptance of the Bill as containing any measure of completeness or finality. With this understanding, I am prepared to vote for the motion, and I would add that I see no advantage in the proposal that the discussion should be deferred, or the Bill re-published. The Bill, as published 12 months ago, is substantially the same measure as that which comes before the Council to-day. It has been subjected to the fullest criticism, and those who think it goes too far, equally with those who think it does not go far enough, are not in the least likely to modify their views by putting off the debate for a few weeks or months. Experience alone will show how the measure will work, and in what direction its amendment will be necessary. To the results of that experience I am content to appeal. No one, indeed, would rejoice more than myself if my apprehensions should prove to be unfounded. But it is my earnest conviction that this Bill will not prove a final or a satis-

factory measure; and, as the Select Committee have not consented to introduce the safeguards which I believe essential to its success, I think it better for the country that the question should not remain in its present state of debate and suspense, but that the measure which commends itself to the majority of the Council should come into early operation, and should be tried by the logic of facts and by the test of results."

The Hon'ble MR. HUNTER said:—"My Lord, I am one of the members of the Select Committee who have not been able to give an unqualified support to this measure. On the second reading of the Bill, two years ago, I felt it my duty to take exception to three of its main proposals. I objected, in the first place, to interfering by statute with the landlord's right to make his own bargain with a new tenant: in the second place, to the produce limit on rent: and in the third place, to the excessive compensation for disturbance. During the passage of the Bill through the Select Committee, these provisions have been expunged, new proposals which seemed to me equally objectionable have been rejected, and it is with much regret that I find myself still compelled to dissent from the report of a body, whose fairness I recognise, and one which has, in my opinion, fought a good fight against extreme proposals from both sides. My regret has been increased by hearing an hon'ble member make use of my dissent in support of a motion which raises the general issue as to the necessity of legislation, and which would postpone legislation for the present. I myself do not understand how any one who listened to the statements made in this Council on the 12th of March, 1883, on behalf of the Government of Bengal and on behalf of the Government of India, can think it either right or expedient that that general issue should now be raised. The Bill came before the Council with the assurances of three Lieutenant-Governors of Bengal that a legislative adjustment of the land question had become necessary for the tranquility and good government of these provinces. These assurances were supported by the opinion of the most experienced district officers and by a great body of information collected by a special Commission. The Government of India had, after further inquiry, given its deliberate assent to the necessity for legislation—an assent which carried with it the sanction of the Secretary of State. But if doubts still remained in the mind of any member as to the sufficiency of the grounds on which the necessity for legislation had been admitted, I think that the papers placed before us in the Select Committee must have completely removed those doubts. I will refer to only one such paper. Mr. Finucane shows that in a tract in which the rents were excessive, over one-fifth of the cultivators absconded into Nepaul in the course of two years; and that nearly fifth of the arable land went out of cultivation. From another tract, in which the rents were still more excessive, one-third of the population absconded, and an almost similar proportion of the land became waste. Why did these British subjects, some 30,000 in number I am told, fly across our frontier to Native territory? Mr. Finucane's report supplies an answer. 'I noticed people,' he says—'by hundreds, sometimes digging in the field for roots which they gathered for the purpose of eating them. Every year people eke out the scanty meals that their means allow them to provide for themselves by digging for roots. The circumstance attracts no special attention. It is not necessarily a sign that the poorer classes are in distress. And yet I can vouch for the fact from personal experience that the bread or cake made of this root (*chechaur*) is the most disgusting compound a man can put into his mouth: and medical officers have pronounced it to be most indigestible, utterly devoid of any nourishment, and provocative of the most irritating bowel complaints.' My Lord, this description, I am thankful to say, applies only to particular tracts. I do not wish to generalise from it: still less do I desire to infer from it that the Bill now before the Council provides the only or the best remedies for the agricultural distress which Mr. Finucane's report reveals. But I do say that even if we were to reject the repeated assurances by the Government responsible for the tranquility of the country, and if we were to question its assertion that legislation is now necessary for the preservation of peace, yet these and similar statements before the Council most clearly show that legislative interference is necessary in the

interests of humanity. Whatever may be my differences in points of detail in regard to the particular remedies proposed, and steady as my opposition has been to what I considered extreme proposals for curtailing the landlord's rights, I think that the native landholders in now raising the general issue as to the necessity for legislation, have adopted a course indefensible in itself, and calculated to do a moral injury to their cause.

"As regards their specific contention for the republication of the Bill, I would ask them what new points are there in the revised measure, which have not already been submitted during a full year to public discussion by the preliminary report of the Select Committee, or by the letter of the Government of Bengal six months ago? I have listened carefully to the speeches of the Hon'ble Peári Mohan Mukerji and the Mahárájá of Durbhunga—in the expectation that some such points would be specified. I have heard that 13 out of the 196 sections did not appear in the Draft Bill. But I have not heard any really new point specified. The truth is that the work of the Select Committee during its second session has chiefly been to reject the extreme proposals, after those proposals had been duly submitted to public discussion by its preliminary Report; and not to insert new provisions of its own. Where a new provision has found entrance into the Bill, it has almost invariably been framed upon old lines. The result of the republication of the Bill, would now be, not to submit new points to public discussion, but to resubmit to public discussion the decisions of the Select Committee upon the old points which have during the past year been amply and publicly discussed.

"My Lord, I have thought it right to state at some length my objections to raising afresh the general issue as to the necessity for legislation, because I shall have to raise several particular issues in regard to the exact form of legislation now proposed. First of all, while I believe that some legislation has become necessary, I do not think that the Council has been placed in the best position to effectively legislate. For, as I have urged in my written dissent, the legislature is asked to deal with the entire relations of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. I agree with the hon'ble member in charge of the Bill that the process of hearing and cross-examining witnesses in the various districts might have led to agitation. But the absence of cross-examined evidence has, in my opinion, intensified and prolonged the present far more serious agitation. In a country where the expression of opinion is unrestrained, and where each of the great interests is powerfully represented in the Press, it is impossible to enter on a measure affecting the rights of large and influential classes without exciting opposition and agitation of a most determined character. The best way to encounter such an agitation is to meet it with facts, and the examination of witnesses is the ordinary and only practicable procedure for collecting a body of facts which can be relied on in a conflict of interests, such as is involved in this Bill. I agree with the Hon'ble Sir Steuart Bayley, however, that when the measure reached the Select Committee, the time had gone past for a peripatetic Commission to take evidence; and I also think that, with the agitation now at full flood, such a Commision would find it very difficult to arrive at the truth.

"If I believed it likely that a delay would enable the Government to collect really important information, or would add materially to the data now before the Council, I should vote for the postponement. But whence is such information to come? If one thing has been made clear by the labours of the Select Committee, it is the extremely meagre and uncertain character of rural statistics in these provinces. The Bengal Government is endeavouring by legislation in its own Council to provide machinery for increasing its knowledge, and for dealing with the administrative difficulties to what insufficient knowledge has given rise. But several years must elapse before the machinery can be brought into working order and produce practical results. Meanwhile we have exhausted all the sources of information which are at present available to the Bengal Government. It has been my business, during the past fifteen years, to acquaint myself with the statistics of each province of India, and to study the sources from which they are derived. More than any other officer of Your Lordship's Government I have had to deplore the inadequacy of the information which we possess for

Bengal. I may, therefore, be permitted to say that all the classes of really ascertained facts known to me in regard to Bengal have been fairly used and are now exhausted. I hope that before many years elapse, those facts will have been supplemented by a mass of new information obtained under the Acts now passing through the Bengal Council. But I see no possibility of obtaining that new information within any period, say of six months, during which this Bill could be postponed. Statistics cannot be run up in a night, unless indeed they are to tumble down next morning. If the Bengal Government were to attempt, in the midst of the present agitation, to institute a statistical enquiry on a large scale throughout Bengal, it would merely be deceiving itself and misleading the public. We have not only exhausted all sources of information now available, but we have heard the views of every class and interest which claims to be affected by the measure. A further postponement would prolong the rural agitation in a most undesirable manner: but it would yield no compensating body of new facts.

"The Select Committee has with much patience threaded its way through the conflicting statements submitted to it. The result has in some cases been the rejection of what seemed to me useful proposals. For example, the sale of the occupancy-tenure, which had at one time the approval of the Select Committee, no longer finds a place in the Bill. It appeared expedient to legalise such sales, not on theoretical grounds, much less from an abstract love of any three letters of the alphabet, but simply because such sales had grown into an established custom in Bengal, and because it would save litigation and prevent extortion, if we gave to such transactions the express recognition of the law. But when the incidents to which the custom was subject came to be discussed, there was no evidence to guide the Committee. Some members maintained that the custom of sale was subject to a fee to the landlord for registering the transfer. Others contested this position; one member thought the fee should be as high as 25 per cent., another thought that there should be no fee at all. In the end the right of sale was dropped out of the Bill, chiefly because no agreement could be come to in respect to the conditions to which the sale should be subject. I regret this result, and I shall give my support to the Hon'ble Mr. Amir Alí's amendment for re-introducing the provision, if he sees his way to attach a substantial fee for the landlord to the exercise of the right by tenant. The position of the hon'ble gentleman and myself in this matter affords a good illustration of our position and that of several other dissenting members in regard to many provisions in the Bill. We dissent not because we disapprove of the measure as a whole, but because each of us wanted to get a little more of his own way in the Bill than he has been able to get. If any one infers from the number of dissents that a majority of the Select Committee is opposed to the Bill as a whole, he will be very completely undeceived when the votes on the motion at present before the Council are recorded.

"I regret, however, to have to call attention to what I conceive to be a fundamental source of weakness in the Bill, arising from its attempt to apply one set of minute provisions for the regulation of rent to two provinces in which the relations of landlord and tenant are so widely dissimilar as in Bengal and Behar. In Behar, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator. Throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the profound economic differences between agricultural relations in Bengal and in Behar find no recognition in the Bill. Throughout the two years' labour of the Select Committee we were perpetually struggling in the meshes of this fundamental error. In my opinion, the result has been to tie our hands in providing perfectly effective remedies for the tenant in Behar, and for the landlord in parts of Bengal. The Bill has accomplished something for both, but not enough for either.

"It is also, I think, defective in another important respect. The root of the agrarian difficulty in Bengal is over-population. 'I consider,' says Mr. Finucane, in describing the wretched condition of the Behar peasantry, 'that it is only the redundant population of Behar which has brought things to this pass,' and the minute sub-division of estates 'creating a number of proprie-

tors whose name is legion.' The Bill attempts to alleviate the evils arising to the peasantry from a too keen competition for the land by placing restrictions on the enhancement of rent. Such restrictions, when effective, are necessarily made by curtailing the rights of the landlords. But there are two other means of dealing with over-population, namely, the reclamation of waste lands, and the shifting of the people to unoccupied tracts With regard to reclamation of waste lands, I shall, in submitting an amendment to the Council, shew that the Bill not only gives no new encouragement for such undertakings, but that it places the proprietor, who himself reclaims waste lands, in a worse position than before. With regard to assisted migrations or shifting of the people to unoccupied tracts, I acknowledge that it would be unreasonable to expect any specific provisions in the present Bill. But I hope that the Government may see its way to reconsider this aspect of the question. The waste land uncultivated but capable of cultivation in Bengal and the two provinces immediately adjoining on the east and west is equal to the whole land under crops in Great Britain and Ireland, and large areas of this waste land are to be found close on the outskirts of some of the most overcrowded tracts, especially Behar. The experiment which the Government has hitherto made to promote and assist the migration of the people to unoccupied or sparsely inhabited tracts have been few in number and inconclusive as to their results. But such enterprises have been conducted on a considerable scale by private enterprise in several parts of the country. I shall cite only two such undertakings. In Birdpur, in the Gorakhpur District, over 23,000 persons have been settled on 250 reclaimed villages, on a tract which forty years ago was swamped and heavy jungle; while the success of the new Sonthal colonies in Assam shows how much can be effected by State aid combined with private organisation. The Government has rendered migration possible by opening up railways, but experience shows that the mere possibility of transport does not suffice to make the people move on. This Bill, in attempting to mitigate the evils of over-population by placing restrictions on the enhancement of rents, tries to remedy what is really a national difficulty at the cost of a particular class. I admit that the legislature is justified in regulating the monopoly in land which over-crowding and over-competition for holdings create in favour of the landlords. The permanent remedy for over-population is not, however, to be found in artificial restrictions upon rent, but in adding to the cultivated area, by encouraging the reclamation of waste lands, and by assisting the people to migrate to unoccupied tracts.

"While, however, I believe that the Bill fails to do all that it might have accomplished, owing to the absence of properly-sifted evidence, and to the fundamental error of attempting to prescribe one set of regulations for two altogether dissimilar provinces, I acknowledge that it does much towards the solution of the questions with which it deals. In the first place, it makes the old law a reality—a reality for the tenants as regards the enforcement of their occupancy-rights within the entire village; a reality for the landlords as regards the enhancement of rent, when such an enhancement can be equitably claimed; and a reality for both landlord and tenant as regards the ascertainment of rent actually due. I am no unqualified admirer of the Bill; but if it had done nothing more than give reality to the uncertain and unworkable provisions of the old law, I should consider myself bound to give it, as a whole, my support. It has been able, however, to do much more than this. It has developed the occupancy-cultivator with all his old uncertainties as to the maintenance of his rights into the settled raiyat. It has given to the settled raiyat a clearly-defined area within which no man can defeat his right to hold his land as long as he pays a fair rent. It has placed a limit to the enhancement of his rent out of Court, and it has given him what amounts to a statutory lease for fifteen years if his rent is enhanced by a suit in Court. Of not less importance are the provisions which render null and void any contract which would prevent the growth of the right of occupancy, or interfere with the enjoyment of the incidents of that right. To the ordinary cultivator it has also secured advantages of great value. In the first place, it gives to every cultivator the presumption that he possesses the right of occupancy in his holding, until the contrary is shown. This presumption is in

strict accordance with the facts, if, as has been stated and not contested, that something like nine-tenths of the cultivators of Bengal are at present entitled to claim those rights. The importance of this presumption has been well shown by the hon'ble Mr. Evans in the present debate: and so far as the ordinary cultivator is concerned, the Bill would, in my opinion, have justified its existence, if it had done nothing more than create this presumption in his favour. It has also, however, provided safeguards against his sudden ejectment from his holding, and against the unreasonable enhancement of his rent. Unless the ordinary cultivator himself consents to an enhancement, his rent can only be raised by a suit in which the Court shall determine what is a fair and equitable rent. The rent thus determined cannot be again enhanced for a term of five years; so that, while the Bill practically secures judicial leases for fifteen years to the occupancy-tenant, it also provides what amounts to a judicial lease for five years for the ordinary cultivator.

"My Lord, these are substantial changes in the existing law in favour of the cultivator. We may regret that these changes afford no general protection to the under-tenant, and no special remedy for the particular circumstances of Behar. But we have the satisfaction of knowing that every one of the changes in favour of the cultivator which the present Bill makes in the old law is justified by the facts, and that the Bill, as revised by the Select Committee, errs by defect rather than by excess. The Hon'ble Sir Steuart Bayley has very fully shown what the measure effects for the other great class affected by it, namely, the landholders. I acknowledge the increased facilities which the Bill provides for the realisation of rent by extending the system of registration, and by creating a new procedure for the record of rights and settlement of rents. But just as I regret that the Bill fails to make adequate provisions for the special needs of the cultivator in Behar, so I regret that it fails to give an adequate response to the demands of the landholders in Eastern Bengal. I do not think that the Bill can be accepted as a final settlement of the land difficulty in either province. I hope that amendments will be carried in this Council which will render the Bill more effective in the hands of both the landholders and the cultivator. But I accept the measure as an important and a valuable instalment towards the adjustment of land rights in Bengal, and I believe that, on the whole, it advances as far towards a final settlement of those rights as we are at present justified in going either by the condition of the country or by the ascertained facts."

The Hon'ble Mr. AMÍR ALÍ said:—"My Lord,—My views respecting this Bill are sufficiently indicated in the dissent which I have recorded, and were it not for a feeling that I am bound to lay before this Council at some length the reasons which induce me to support the present motion I should have abstained from trespassing on the time of this Council. If I prove too lengthy, my apology will be the proverbial long-windedness of the profession to which I belong.

"I had hoped that we had by this time passed out of the region of discussions concerning abstract principles and intangible theories. I had hoped that the question of the necessity for some legislation of this character had been sufficiently demonstrated by stern facts. The only subject which remained for determination at this stage was whether the Bill in its present form sufficiently covered the ground which it was intended to traverse—whether it fulfilled thoroughly the objects for which it was introduced? I do not propose to enter here into an examination of that somewhat abstruse question—given the necessity for legislation to regulate the relation of landlords and tenants in this country—whether the State has the power to do so or not; in other words, whether the State, by ensuring the zamíndárs against enhancement or variation of its own demands (and that in effect is the meaning of the Permanent Settlement), had abdicated in perpetuity its legislative functions to protect and safeguard the interests of another class—a much larger and more permanent class. If the contention of the landlords on this head is correct, the result necessarily follows that the Government of this country is an incomplete Government, that it has in fact established an *imperium in*

imperio, and that, so far as the raiyats are concerned, it has delegated all its powers to the ever-shifting body of zamíndárs.

"The zamíndári argument reduced thus into plain language sounds somewhat absurd, and one can hardly suppose that the zamíndárs, or rather their advocates, mean seriously all that they have urged against the power of legislation possessed by the State. Assuming, however, that the Permanent Settlement was a bar to the State ever interfering between the raiyats and the zamíndárs, the fact that in 1859 the legislature did interfere with the acquiescence or consent of the landlords of that time has, I would contend, removed the bar. It is unnecessary for me to dwell much longer on this branch of the question, for my hon'ble friend Mr. Evans has completely demolished that preposterous argument. However, one observation I would make. Whatever may have been the position of the zamíndár under the Moghuls, whether he was merely a rent-receiver of the territorial revenue of the State from the raiyats, as described by Mr. Harrington, or something more, the legislature, whilst settling the revenue payable to the State in perpetuity, expressly reserved to itself the right, which belonged to it as sovereign, of interposing its authority in making from time to time all such regulations as might be necessary to prevent the raiyats being improperly disturbed in their possession or loaded with unwarrantable exactions. That power, expressly reserved on that occasion, has been exercised repeatedly, and it is trifling to contend that because the State a hundred years ago settled in permanency the revenue payable by the zamíndárs, therefore, it abandoned all its duties and responsibilities towards millions of its subjects.

"The question of necessity is one which is certainly deserving of great consideration. With reference to this point I desire to say a few words. Since the year 1870, the necessity for a thorough revision of the land-law has been forcing itself upon the minds of all thoughtful observers. The tension of feeling which had sprung up about that time between the zamíndárs and raiyats had occasioned considerable administrative difficulties. The zamíndárs themselves had commenced to demand some change in the existing law, in order to give them facilities for the realization of their legitimate rents, while the raiyats complained of the arbitrary exercise of the powers of enhancement and eviction. These difficulties were accentuated on one side by the confusion of ideas relating to the subject of tenant-right, on the other by the extravagant claims put forward by the new landlords, who were most tenacious of their rights to enhance the rents of their raiyats. It will be remembered that Act X of 1859 had been passed with the object of providing some efficient safeguards against the exercise of arbitrary power on the part of the landlords. From 1799 to 1859, as His Honour the Lieutenant-Governor remarked in his speech on the introduction of the Bill in Council, 'feudalism on the one hand, serfdom on the other, were the principal characteristics of the land system of Bengal.' The legislature no doubt endeavoured to maintain intact 'the constitutional claims of the peasantry,' but 'practically,' His Honour said, 'they were submerged in the usurpations and encroachments of the zamíndárs.' Act X of 1859 undoubtedly effected some improvement in the position of the raiyats, but the rule for the acquisition of prescriptive occupancy-right by a twelve years' occupation of particular plots of land did more harm than good. And the rule of enhancement based on the productiveness of the soil eventually became a fruitful source of difficulty and trouble.

"In 1873, the Government for the first time awakened to the gravity of the situation. The famous Pubna riots broke out in that year, and since then there have been periodical collisions between raiyat and landlord in different parts of the province. In 1873, Sir George Campbell spoke thus about a definitive settlement of the land question :—

'If the settlement is to be effective, it must not only get the zamíndárs out of their present difficulties, it must bind them for the future. It must settle all questions of possession, measurement and rates, it must decide who is and who is not liable to enhancement, and it must have power to prescribe a term—a good long term—for which its adjustment is to be binding, and the zamíndárs are not to be allowed to disturb the rates and arrangements made. No doubt this will be a serious undertaking, but it would be an effectual and

beneficial settlement if fairly and thoroughly carried out. The Lieutenant-Governor would not advocate interference unless it is carried to this point.'

"In 1875, Sir Richard Temple, who had taken the place of Sir George Campbell, again brought forward the proposal regarding the amendment of the substantive law, and invited the opinion of the British Indian Association on the subject. In a letter dated 10th of March, 1876, the Honorary Secretary of that body pointed out the defective character of Act X of 1859 in essential particulars, and the necessity for a radical amendment. Before this, in June, 1875, the British Indian Association had already represented that the struggle between zamíndárs and raiyats, due to the indefiniteness of their relations and the readiness of the raiyats to combine in withholding rent, could only be ended by a general revision of the rent law. In March, 1876, whilst the Agrarian Disputes Act was pending before the Bengal Council, our lamented colleague, Rai Kristodás Pál, urged that the indefiniteness of the principles of Act X of 1859 had brought suits for the adjustment of rents to a deadlock. It was in consequence of these repeated representations, and the urgency of the difficulties which had arisen both in Eastern Bengal and Behar, that Sir Richard Temple asked for leave to introduce a measure into the local Council; but before he could get a reply he was sent to Southern India to look after the relief measures. When Sir Ashley Eden assumed charge of the Lieutenant-Governorship of Bengal, he found affairs in this position. The zamíndárs, on one side, were calling out for facilities for the recovery and enhancement of rents; the raiyats, on the other hand, were asking for protection against illegitimate enhancement and eviction; whilst the officers of Government charged with executive administration were of opinion that some measure by which the existing tension of feeling could be removed should be taken in hand at once.

"It was in view of these signs and shadows of coming events that Sir Ashley Eden strongly urged upon the Government of India the advisability of settling the rent question definitely while the country was tranquil, while seasons were favourable and the people well off, and reason could make its voice easily heard, instead of allowing things to drift on until another famine or a second outbreak of the Pubna riots compelled the Government to take up the subject with all the haste and incompleteness that too frequently affect measures devised under circumstances of State trouble and emergency.

"This Bill, I mean the *original* Bill, was introduced with the object of definitely placing, so far as was possible, the relation of landlords and tenants on a satisfactory basis. The objects were distinctly defined in the speech of the hon'ble the Law Member—

"(1) To give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.

"In order to attain the first object, it was proposed to make the following changes in the existing system:—

"(1) to extend the occupancy-right to all resident raiyats holding lands in a particular village or estate for more than twelve years;

(2) to make occupancy-rights transferable;

(3) to introduce a fixed maximum standard for the enhancement of rents.

"The disastrous and demoralising consequences resulting from the twelve years' rule of prescription are now recognised by all. It did away with the long-established distinction which had existed from the earliest times between the resident and non-resident raiyats, reducing them all to a dead level of uniformity; the raiyats claiming rights of occupancy being required under the existing law to prove that they have held for twelve years not merely in the village lands, but in everyone of the particular field or plots in respect of which the right was claimed. When it is borne in mind how frequently the twelve years' prescription is interrupted by a mere shifting of the fields, sometimes by eviction within the term, in other cases by the grant of terminable leases for short periods with the option of renewal, it will become apparent how difficult it is in

general for the raiyat to acquire a right of occupancy, or to prove it when it is questioned. Considering the testimony which has been borne from all sides of India to the prosperity of raiyats possessing occupancy-tenure, to their ability to withstand and make head against droughts and scarcities, to tide over in general more successfully such disasters as were caused by the cyclones and the great tidal wave in Deltaic Bengal, it is unjust to charge us with being doctrinaires and theorists in coming to the conclusion that a measure simplifying and facilitating the proof of occupancy-rights is essential to the well-being of the agricultural population of Bengal; in fact, in endeavouring to restore the occupancy-raiyats to their old position.

"The same fatality which overtook Act X of 1859 in Committee has befallen this measure. Owing to the same spirit of compromise which wrecked that Act, most of the alterations which have been effected in the present measure at its latest stage have been made, as admitted by the Hon'ble Mr. Evans, in favour of the zamíndárs, and some of the most important provisions for the security of the raiyat and the improvement of his condition have been abandoned, or so modified as to be of little advantage to him. We had expected that the measure now under discussion would give a legal validity and statutory sanction to the custom of transferability of occupancy-holdings; we had hoped that the law relating to the enhancement of rents would be so modified that, supplying to the landlord a more workable method of enhancement, it would protect the raiyats from incessant harassment and perennial destitution; we had hoped that there would be a practical check imposed on rackrenting that some substantial guarantee would be given against the ejectment of non-occupancy-raiyats, simply with the object of preventing their obtaining that interest in the soil which would induce them to improve their husbandry and their condition in life.

"The amended Bill falls far short of the just expectations of those who, after all this agitation, would have liked to see a definitive settlement of the land question in Bengal.

"I shall have to say something with reference to each of these points when I move the amendments which stand in my name. I desire, however, to remark in passing that I cannot help regarding the abandonment of the transferability clauses as a serious misfortune. The custom of transferability had grown up in many districts of Bengal and Behar, and was gradually extending itself throughout the province. It had also been conclusively proved that those raiyats who had a permanent alienable interest in all their holdings were more prosperous than those who had no such interest, that their cultivation was better, and that they were more capable of making head against scarcities and famines. In the face of this evidence, to forego all the advantages gained after so much discussion, to leave the right of transferability to custom in the present tension of feeling between landlords and tenants, is to invite the zamíndár to contest the right every time the opportunity occurs. The result of all this will be, firstly, to place a large proportion of the purchase-money in the pockets of the zamíndárs, and, in the second place, materially to retard the extension and growth of the custom of transferability even where it has taken root. I am glad that my hon'ble friend, Dr. Hunter, is willing to give his valuable support to my proposal for the re-insertion of the transferability clauses, and I think I shall be able, when I bring forward my amendment, to meet his views regarding the amount of fee which ought to be paid by the raiyat. Probably my hon'ble friend will not object to exempt those *guzáshtadárs* whose right is protected by long-established custom from the payment of any fee.

"The objection against a gross-produce limit proceeds mainly on theoretical and *á priori* grounds. It has been said that if such a limit is adopted, in every case of enhancement by contract, the registering officer will have to enter into a minute and difficult enquiry, and that the same will be the case in Court. I maintain that this argument assumes, two points. In the first place, it presupposes an insuperable difficulty in making a fair rough average estimate of the yield of land and its value. Now, I venture to say there is no villager with any knowledge of cultivation who

has not a rough conception of the yield of produce and the value of the crop. In the second place, the argument against the gross-produce limit assumes that in the registered agreements to pay enhanced rents the parties do not or will not enter the quantities of land, its nature, capacity, &c. If the statement of these facts will not enable the registering officers to form some rough estimate of the produce limit, I am afraid the Local Government will have to improve its staff of registering officers.

"I may observe here that in the Punjab the land-revenue assessment is limited to the equivalent of one-sixth of the gross produce, and the system has been found to be extremely practicable. If it is practicable in the Punjab, why should it not be workable in Bengal?

"As regards the non-occupancy-raiyat, our contention that the protection which has been given to him by this Bill is utterly inadequate, is borne out by the frank avowal of the zamíndárs' representative that henceforth no non-occupancy-raiyat will be allowed to acquire the status of an occupancy-raiyat; such an avowal would hardly have been made if the guarantee given to the non-occupancy-raiyat against eviction had been adequate.

"If the extension of occupancy-rights among the raiyats be conducive to the general welfare of the community, then there can be little doubt that any loophole for perpetuating tenancies-at-will, for continuing the vicious system of shifting and eviction would be disastrous to the public weal. As population increases, as the demand for land becomes greater, the effort to exclude the possibility of acquiring occupancy-rights will be redoubled. At the same time I desire it to be distinctly understood, that I do not advocate the promiscuous extension of the occupancy-right to non-occupancy-raiyats. What I want to see is that the latter should be reasonably protected from perpetual harassment. This I submit has not been done efficiently by the Bill. At the same time I admit that the present measure is an improvement on the existing law. The acquisition of a right of occupancy by residence; the prohibition of contracts precluding the accrual of the right of occupancy; the restriction on enhancement out of Court; the validation of the raiyat's right to make improvements, constitute the most commendable features of the present Bill, and I accept it as the first instalment of the inevitable legislation which *must* follow sooner or later to settle the relations of the cultivating classes with their landlords more satisfactorily. My Lord, the hon'ble member in charge of the Bill has referred in kind terms to the services of the non-official members on the Committee. As far as I am concerned, it was a labour of love, for I cannot help taking a keen interest in this measure. The bulk of the peasantry in Eastern Bengal, numbering several millions of souls, belong to my faith, and naturally have a claim upon the Muhammadan member for the time being in Your Excellency's Council. In Eastern Bengal, the agrarian troubles are aggravated by religious differences and the fact that many of the zamíndárs are new-comers. The new landlords, generally speaking, have little or no sympathy with their peasantry, most of whom are Mussulmans. If the law gives them power, say, of enhancement or ejectment, it is worked without compunction and without mercy. I say this advisedly. The causes and character of the Pubna outbreak must be familiar to this Council, though apparently they have been forgotten outside this Council Chamber. They illustrate most strikingly the general nature of rent-disputes in Bengal. I will take the liberty to quote here a passage with reference to the outbreak from the Government of India's despatch to the Secretary of State, dated 21st March, 1882:—

'The affair originated in the Isafshahi parganá, formerly owned by the Rájás of Nattore. In the decay of that ancient family a part of its possessions was purchased by new-comers, whose relations with their raiyats and with each other appear to have been unfriendly from the first. Collections were raised by decreasing the standard of measurement and by imposing illegal cesses which were afterwards more or less consolidated with the rent. The raiyats never gave any written or formal consent to the conversion of these voluntary abwábs or cesses into dues which could be realised according to law. In time the rent-rates of Isafshahi came greatly to exceed those of neighbouring tracts.

'Two causes of the dispute were thus a high rate of collection compared with other parganás, and an uncertainty as to how far the amount claimed was due. A third cause was the violent and lawless character of some of the zamíndárs, and of the agents of others. There had been affrays in which men were killed by spear-wounds. Swordsmen had been sent to make collections, and cases of attack by clubmen and of kidnapping are mentioned in the report.'

"It has been stated in this Council that the reasons for interfering in Behar with the status of occupancy-raiyats are non-existent; that the practice of shifting is not resorted to there for the purpose of avoiding the accrual of the right. This statement may be true in the case of considerate zamíndárs like the Hon'ble the Maháráját of Durbhunga, who, whilst tenacious of their ancient rights, respect and value the constitutional rights of the peasantry. But by way of answer to his criticism on that portion of the Bill which aims at giving a certain degree of security to the occupancy-raiyat and towards facilitating the proof of his right, I would recall to his mind what the zamíndárs of Shahabad, at a meeting held on the 31st October 1880, at Arrah, said on the subject:—

'At present landowners prevent the growth of occupancy-rights by granting leases for five years only, or by changing the lands, or by managing so that a raiyat shall never hold at the same rent for 12 years. In practice the last expedient is found sufficient, as the Courts find claims to occupancy-right not proved unless the raiyat can show that he held the same land for 12 years, by proving that he paid the same rent. Under the proposed law zamíndárs would not suffer raiyats to remain for three years.'

"The Hon'ble Mr. Evans has urged that, if the circumstances of Behar were so exceptional as they were represented to be by the officers of Government who had reported on the subject, there ought to have been two Bills, one for Behar, another for Bengal. I admit that, if we had adopted this course, we would have been better able to deal with details; but on that principle there ought not to be two Bills, but four Bills—one for Eastern Bengal, another for Central Bengal, a third for Northern Bengal, and a fourth for Behar; for the conditions of rural economy in each of these tracts are dissimilar to each other. I doubt, however, whether the public or the people would have thanked the legislature for such a course. Besides, the evils which the legislature desires to remedy, the circumstances which it desires to direct and control are not after all very different in either of these parts. The landlord everywhere desires to recover his rent easily; the raiyat everywhere wants to be allowed to live in peace; and the legislature has before this dealt with the province as a whole. The limit of two annas on enhancement by private contract has been strongly objected to. It is said that such a restriction is not only opposed to all the principles of freedom of contract, but that it will prove practically mischievous, as it will always drive the parties into Court for obtaining a higher enhancement. My Lord, how far the rules of political economy are applicable to a country where the mass of the people live from hand to mouth is a question which was answered effectually, though at the cost of a million of lives, during the Orissa famine. The Bengal Government on the occasion attempted to deal with the calamity which had overtaken the country in strict accordance with the rules of political economy, but the results completely falsified the expectations entertained at the time from the application of the economic nostrum. 'When political economy speaks of freedom of contract,' were the memorable words of Sir Evelyn Baring used in this very hall, 'it means that free choice, dictated by intelligent self-interest, is the most efficient agent in the production of wealth.' Can any one who is acquainted with the condition of the millions of raiyats, whose holdings do not average more than two or three acres, and who pay a rent of less than five rupees a year; can any one who knows the circumstances under which this vast mass of pauperised cottiers, living always on the verge of starvation, till the soil, say that these men can exercise a free and intelligent choice in their contracts?

"My Lord, I am afraid I am encroaching too much on the indulgence of the Council. But I cannot help being somewhat long, in spite of the charge of prolixity that may be brought against me. Political economy is thrust down one's throat at every turn of the question; indeed, so often, that I am tempted to quote a passage from the master of political economists, which I hope will be taken to heart by the warmest upholders of zamíndári rights.

'Rent,' says Mill, 'paid by a capitalist who farms for profit and not for bread may safely be abandoned to competition; rent paid by labourers cannot, unless the labourers were in a state of civilisation and improvement, which labourers have nowhere yet reached and cannot easily reach under such a tenure. Peasant rents ought never to be arbitrary,—never at the discretion of the landlord; either by custom or law it is imperatively necessary that they should be fixed, and, where no mutually advantageous custom has established itself, reason and experience recommend that they should be fixed by authority.'

"My own view is that it is not only necessary to impose a limit upon private contracts, but that, in order to be efficacious, a similar limit should be introduced upon enhancements in Court; otherwise I believe the wholesome provision will become practically valueless.

"The remarks of the Hon'ble Bábú Peári Mohan Mukerji, that there is practically no non-judicial power of distraint given by the Bill for the realisation of rents, are perfectly true. Undoubtedly in the despatch to which both the hon'ble member and I myself have referred it was proposed 'to provide for the more speedy realisation of arrears of rents, *when the rates are undisputed*, by a modified method of distraint.' It must have escaped the notice of my hon'ble friend the importance to be attached to the expression 'when the rates are undisputed.' Is there any case in which the rates are not disputed? Probably, in some districts, or rather estates, bordering on Nepal and other frontier tracts, which give the raiyats a facility to disappear after raising their crops, a modified power of distraint might prove useful; but when the Committee came to consider the abuses to which this power is open and the oppressions practised under its guise, it was thought advisable not to leave to the zamíndár the power of distraint at his own free will and according to his own method. The provisions of Chapter XII are, I think, in accord with the Government of India's proposal in the despatch referred to.

"It has been contended that we have no cross-examined evidence furnishing, as it were, the groundwork over which the legislative structure has been built. A great deal of money has already been spent in various quarters in the course of these discussions, and probably, if the Select Committee had decided to hear cross-examined evidence, a little more would have been put into the pockets of lawyers. But whether evidence so collected would have been one iota more valuable than the testimony of competent officers and thoughtful observers is a question which I cannot answer. I have pointed out the features in the Bill which stand out as marked improvements over the existing law. I have also pointed out the features where it falls short—miserably short—of the just requirements of the present situation. I trust that, before the final vote is taken, the objectionable features in the Bill will be removed, the most important of them—the most dangerous—being the ground of enhancement based on increase in the prices of food-crops.

"This ground of enhancement, besides being open to various economical objections, furnishes the landlords with a most formidable and trenchant weapon for enhancement of rents, the use of which in many parts of Bengal and throughout Behar must prove ruinous at no distant date to those raiyats whose rents are already high enough. In defence of this proposal it has been put forward that enhancement on the ground of increase in prices does not take more of the crop from the raiyat; in other words, that it is the value of the crop expressed in larger terms owing to the diminished value of silver. This is undoubtedly a very specious argument, but in spite of its speciousness I maintain that it is extremely unfair to the raiyats. On examining the argument even on the basis of political economy, it is seen that it leaves out of consideration an increase in the necessities of a raiyat, and a larger expenditure on account of what he has to buy. Furthermore, it is clear that the allowance for cost of production may often prove totally insufficient. For these and other reasons, which I shall mention more particularly when I move my specific amendments, it seems to me that the effects of this ground of enhancement have hardly yet been realised to their fullest extent.

"As the question stands at present, I accept the Bill as a step in the right direction, and in looking at it in that light, and approving entirely of the

principles which it embodies, I vote for the motion that the consideration of the Bill should be proceeded with without delay.

"With reference to the motion for the re-publication of the Bill, I desire to mention that, had I believed any possible object would be gained by such a course, that the zamíndárs or raiyats would become by delay more willing to make concessions to each other, I might have been inclined to vote for the postponement of the consideration of the Bill until next session. As it is, I believe a postponement will keep the country in a state of feverish excitement, intensify still further the bitter feelings existing between the two classes, and prove of no avail to anybody."

The Hon'ble MR. GIBBON said:—"My Lord, with reference to the amendment proposed by the Hon'ble Peári Mohan Mukerji, that the Bill be re-published, and that the consideration of the measure be deferred for at least three months, I must, I am sorry to say, oppose the amendment. The state of the country is such, the agitation for and against the measure is becoming so widespread, I am convinced that it leaves only two courses open to Your Excellency's Government—either to proceed with the measure, or to abandon it for ever; any third course will be fraught with danger to the public peace, as well as ruinous to the interests of both landlords and tenants. For six years the provisions of the Bill have been in some shape or another subjected to public criticism; every alternative proposal, every impossible crotchet, has been discussed and threshed out; and, although the Bill may contain a few sections that were not contained in the draft Bill submitted to the Committee, it contains no provisions that have not already been subjected to public criticism.

"I am sure no arguments could be adduced for or against any of its provisions that are not contained in the mass of correspondence already submitted.

"Believing such to be the case, I cannot realize what good purpose is to be served by the delay asked for. On the contrary, in the interests of the landlords more so than in the interests of the tenants, delay is to be deplored. We have nothing to gain by the delay, much to lose. Judging from what I see and hear around me and in my work, I believe further delay, more indecision, means ruin.

"The fears of the zamíndárs have been excited fully as much by the many crude proposals from time to time submitted as from anything contained in the Bill. Their fears of the measure, their public utterances, are having their effect on the minds of their tenants, and we must not be surprised if their tenants measure their own gains by the estimate placed by the zamíndárs on their own losses.

"The raiyats believe that the Bill will give them fixity of tenure without any reference to the means by which they may acquire possession of the land; a right to sub-divide and transfer their holdings piecemeal; freedom from enhancement; freedom from payment of rents; a general right to appropriate other peoples' property. We now require something definite, something final, to recall us to our senses. If the proposal of the hon'ble member is carried, we may expect to see the tenants acting up to the tenor of their convictions, defying all law, following the bent of their inclination.

"The Courts are at present blocked with litigants, but unless something is decided upon quickly the work the Government officials are now required to do will be child's play in comparison with the work that would be cast upon them.

"If the Bill is not proceeded with or abandoned, Your Excellency's Government must be prepared to substitute one of a very summary nature. Your Excellency's Government must be prepared to manage half the zamíndáris of the country, for I am quite sure that if the present agitation is allowed to proceed unchecked we will not be able to manage them for ourselves.

"The only means of checking this agitation is to let us know at once the best and worst we have to expect under the Bill.

"If I understood the Hon'ble Mahárájá Bahádur correctly, he would even at this stage of our proceedings delay the progress of the measure until a Commission of Enquiry has been held. A Commission issued now with the declared intention of basing legislation on its report would have a most demoralizing effect on the country; it would divide the country into two hostile camps, bespattering each other with mud; few among us would see the end of it; all would regret the result.

"My Lord, with reference to the subject-matter of the Bill, so much has been said on almost every one of its provisions that little is left for me to say. For me to attempt to improve on the many admirable arguments adduced in support of the views I hold I conceive to be an impossible task—also a needless one to attempt to refute, in one set speech, the many arguments with which I differ—a waste of time—with so many amendments on the notice-paper,—an amendment, sometimes two or three, on every important section in the Bill. I may hope that ample opportunity will be afforded us of discussing our respective differences to some better purpose hereafter.

"With reference to the much-disputed point as to whether the Bill in any manner infringes the terms of the Permanent Settlement, or whether the Government, in now legislating as it is about to do, only acts up to the powers it reserved to itself in the Regulations, I have no wish to enter at any length. I would only say that, in my opinion, with the exception of section 18, which does to all intents and purposes transfer the proprietary right in the soil from one class of persons to another, the Select Committee, and through it the Government, have carefully kept within its powers. The Bill, with the exception of this one section, does nothing to interfere with the proprietary right in the land, but it does overmuch to regulate the landlord's dealings with his tenants.

"I will now try to confine the few remarks I wish to make to those portions of the Bill which are to regulate our business transactions, which instruct us in the manner we are to conduct ourselves towards our tenants, and the difficulties we shall have to contend against in following its instructions—points which it appears to me have been lightly passed over or not gauged at their true significance. The Bill as it stands will do all the hon'ble member in charge of it has declared it will do to secure to the tenant the uninterrupted enjoyment of his legitimate rights; it has made the position of the raiyat, both occupancy and non-occupancy, impregnable; and in one most important respect it will effect more for them than the hon'ble member has taken credit for; by a small and as yet little noticed change made in the procedure free the country from wholesale enhancement under pressure.

"The alteration I refer to is the substitution of immediate suit for the present practice of issuing 'notices of enhancement through the Courts months previous to the introduction of the suit.' The practice of issuing notice of enhancement through the Courts has done more to facilitate wholesale enhancement of rents of estates than any other provisions of the present law. Notice of enhancement has necessitated present legislation and made this Bill possible. This change about to be made in the procedure will, I am sure, be beneficial; its effects will, I hope, be far-reaching; it will, I hope, make the restrictions placed on voluntary enhancement under section 29 unnecessary.

"That legislation is to a certain extent, as provided by the Bill, necessary, there can, I think, be no doubt; but whether in the early stages of the controversy the alteration of a few sections in the present law would not have proved sufficient may, I think, be allowed to be an open question. We will admit that you have gone too far to recede: you must proceed, and we, both landlords and tenants, are wise if we accept the inevitable with a good grace. But with reference to this Bill many hon'ble members, many persons who have taken part in this controversy, when they fail to meet the argument that it is not suited for Bengal, fall back upon the argument that it is required in Behar. Nothing is too bad to say of Behar; no restriction is too severe to be placed on our actions. If the measure is required for Behar and is not required for Bengal, we should withdraw that Province from the sphere of its operations. If the Council are of opinion that the Bill is required in Behar and not in

Bengal, we should drop it for Bengal and proceed with it only with reference to Behar. For my part I am happy in believing that we in Behar are no better, no worse, than our brethren in Bengal; that our tenants are not the down-trodden, poverty-stricken men they are often depicted; and I would fain hope that, when some among us set aside the spectacles through which we are looking, and judge with our own eyes, our tenants will be found in every way as well off and as independent a class as any in Bengal. For my part I am convinced that, if any portion of this Bill is unsuited for Bengal, it is equally unsuited for my province. That the rents of whole estates have been unduly enhanced I admit, but that my province is rackrented as a province I deny. I deny also that there is any necessity for the severe restrictions to be placed on voluntary adjustment of rents under section 29, and in placing such restrictions on it we are acting contrary to the declared principles of the Bill.

"Although I am strongly opposed to indiscriminate enhancement of rents, I am equally opposed to severe restrictions being placed on the landlord's right to enhance where enhancement is fairly due. I am still more opposed to unnecessary obstacles being placed in the way of a mutual adjustment of rents, or, for that matter, in the way of voluntary enhancement out of Court.

"All such unnecessary restrictions only hamper the good men among us; they will be evaded by the worldly-wise.

"My Lord, three more gaps must be filled up before the restriction in this section will be effectual, and to stop these gaps some of the best portions of the Bill must be revised.

"With reference to section 29, the Hon'ble Mr. Evans has shown the Council more clearly than I am able to do the difference between adjustment of rents and enhancement of rents. He has quoted the Malynuggur case as a case in point. If I understood him correctly, he submitted it in support of the planters' contention 'that an adjustment of rents should be allowed when one party to the agreement declines to continue to fulfil the conditions under which the tenancy was previously held.'

"If I understand the case correctly, it was hardly a case to the point; it was a case in which it suited one party to the agreement to set aside the conditions under which the tenancy was held, and the party who found it convenient to set aside the conditions of the tenancy claimed an enhancement of rents on the ground that he had cancelled a condition of the tenancy which he no longer found it convenient his tenants should fulfil.

"As to the rights of the different parties under the present law I have no concern. I would only point out that this case in no way represents our claim: our claim is represented better under section 51, which says:

'If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.'

"The practical effect of this will be that the Courts will find the conditions of a tenancy are equally binding on both parties, and that the person who sets aside the conditions without consent shall make good the other's loss by a re-adjustment. All we claim is that the party who finds it convenient to set aside the conditions of a tenancy shall not be placed in a position to retain all the advantages minus any onerous or compensating conditions.

"Section 29 will have the mischievous effect attributed to it by the Hon'ble Mr. Evans; its effects could only be redeemed by the Government declaring that all suits for enhancement may be brought free of cost. This I deem to be impossible. Many urgent representations have been made in Committee and out of it to cheapen costs of suits.

"It has been recommended to reduce court-fees and to expedite the hearing of suits—both very necessary. At present we are put to great expense and needless loss of time by the delays in the hearing of our suits; our witnesses are obliged to travel long distances only to be sent back. The lessening of court-fees is not sufficient; it is necessary to reduce process-fees also.

"I do not know how many of the hon'ble members here present are aware that if I procure a decree against a tenant for arrears of rent, if his holding consists of ten pieces of land, he must pay an attachment fee of Rs. 2 for each piece and also a further fee of Rs. 2 on each piece as a fee on sale. Such fees are exorbitant, and they fall on the judgment-debtor. Unless such are remedied, the provision of the Bill which substitutes sale of holding for ejectment after decree will be cruel.

"For all sums under Rs. 100 the judgment-debtor has to refund 65 per cent. of the principal as costs of the plaintiff; he has to stand all his own costs plus sale-fees if the holding is sold.

"The changes the Bill will necessitate in our modes of transacting business are very great. Receipts must be kept in counterfoil, with severe penalties attached for neglect to deliver; agreements must be registered; all accounts must be kept in bound books; a suit for pattá and kabúliyat has been set aside and an application for a declaration of conditions under section 158 substituted; the landlord must no longer neglect to deliver a receipt; and other changes too numerous to mention have been made—all improvements in a way; but the penalties for omission and commission are so severe, so many opportunities will be afforded for worrying the landlords, that the Bill if hastily or harshly administered may be turned into an engine of oppression. It must be remembered that to carry out the instructions of the Bill in their entirety the habits of a lifetime must be discarded. In attempting to follow your rules we shall require all your sympathy—much forbearance. Throughout the discussion much stress has been laid upon the necessity of compelling the landlords to keep their accounts in bound books, much discredit has been cast upon their mode of keeping accounts, but no one has thought it necessary to enquire if it has even been made possible to do otherwise than as we now do. When we keep our accounts in bound books they are called for in evidence not only in our own cases but in the interests of others; our servants have to take them to Court half a dozen times before their evidence is taken; our books are detained in or out of Court for days together; some of my books are detained for months; we are at the mercy of our opponents and of the Courts.

"I will leave the Hon'ble Council to judge of what use such books are to us when returned.

"The remedy we must leave to others to provide. All I can say is that, as the accuracy of the landlords' accounts will depend upon the punctuality with which they are written, it becomes a matter of the first importance that the present state of affairs be not allowed to continue; if it does, our second state will be worst than our first; the landlord will be compelled to keep two sets of books, one for himself and one for the Courts.

"Under the Bill a registered document is in many instances absolutely necessary; in all instances it will carry greater value than an unregistered one. The Hon'ble Mr. Evans has quoted the authority of the Board of Revenue to prove how difficult it is to induce tenants to register. I myself am a strong advocate of registration; registration should be encouraged in every way possible, but it remains for the Government to make registration possible. The Select Committee has called the attention of the Government to the necessity of expediting and cheapening registration: at present registration is in some cases almost prohibitory, in some cases quite so; at present every tenant must waste at least 48 hours of his time besides having to travel long distances; documents are impounded or returned for the most trivial errors; and if such is the case when registration is the exception and not the rule, what will it be when registration is made compulsory? Under the Bill there is no enhancement of the rents of a bhaoli tenure, and rightly so; the initial rent will be the rent for all time to come; but under the law a bhaoli agreement cannot be registered; should a dispute arise as to the rate of the tenant's rents, he must prove his right to hold under section 51 or pay at the rate others are paying. Another change is about to be made in the procedure, and I hope it will prove itself to be a beneficial one, but again all will depend upon the cost of the application.

"An application under section 158 to declare the terms and nature of a tenancy is to be substituted for the time-honoured but cumbersome practice of a suit for the interchange of documents. There is nothing in the Bill to prohibit their interchange; on the contrary, they are made necessary at every step, but they cannot be sued for. The change is a good one and practical, but it will take us some time to understand. If the cost is not made prohibitory, it should benefit both parties; as it is to be a simpler mode of proceeding I hope it will be a cheaper one. Under the Record-of-rights and Settlement chapter much good will, I hope, be effected; vast and exceptional powers are given to the Government under it; but those powers, as they are intended to meet exceptional cases, we may, I think, trust the Government to exercise them only in cases of grave necessity. I believe this chapter, as it stood in the draft Bill, created more uneasiness, greater consternation, among the landlords than any other portion of the Bill. I hope when they fully realize the great changes that have been made in this chapter by the Select Committee they will be re-assured.

"Much as the Bill will do for the position of the raiyat in respect to the position he will stand in to his landlord, it does nothing for him with respect to his credit with his banker. It omits transferability from among the incidents attached to an occupancy-holding; on this point it leaves the law as it stands.

"I regret that the Government does not see its way to legalizing and controlling transfers of holdings. I do not now intend to re-open the question. I believe it would be a hopeless task to attempt to carry such an amendment to the Bill against the solid vote of the Government. I believe the measure will soon force itself on the attention of the Government, when they will have to review their present decision. By forcing on a discussion now I should weaken my case. I am strongly of opinion that legalized transferability of the whole holding is the only valid restriction that can be effectually put on the subdivision of holdings which is now going on all over the country, which the landlords are in some instances encouraging, in others are powerless to prevent.

"There is only one other subject that I would wish to refer to. I will then cease from monopolizing the time of this Hon'ble Council. I refer to the matter of contracts. A great outcry has been raised against the Government for prohibiting a tenant from contracting himself out of certain rights attached to a tenancy. Although it is to my interest as a trader to support free contract, in this matter I have voted with the majority of the Select Committee.

"Under the Contract Law a contract to be valid must be made with the free consent of parties, for a lawful consideration and for a lawful object.

"As well as I am able to remember, their representatives in or out of Council have never claimed a right to make a contract with their tenants for lawful consideration; all they have ever claimed is a right to induce their tenants to sign away acquired rights under the shadow of a renewal of leases, or to debar them from acquiring prescriptive rights in the future. With reference to the other important and equally weighty matters contained in the Bill, such as prevailing rates, under-raiyats, non-occupancy-raiyats, settled raiyats, presumptions, proprietors' zirát land, merger, &c., and with reference to the gross-produce limit which has been omitted from among its provisions, I will reserve what I have to say until the specific amendments come under the discussion of Your Excellency's Council.

"Before I cease, I would refer to a remark which fell from the Hon'ble Mr. Goodrich, that no provision has been made for the acquisition of land for charitable purposes. I think, if, the Bill is seen to, it will be found that section 84 provides for this; but I am sorry the majority of the Committee did not see their way to adopting my suggestion to include the acquisition of land for irrigation-purposes in the section. If it is possible to acquire land for the one purpose, it is possible to acquire it for the other."

His Honour THE LIEUTENANT-GOVERNOR said:—"My Lord, I do not think I should have attempted to say anything at the present stage of the discussion had it not been that I have been referred to by very many speakers who have

preceded me. We have had very appropriately an exhaustive statement from the hon'ble member in charge of the Bill, who has given us a full history of the proceedings since this Bill was last before the Council. We have had speeches also from most of the members of the Council—certainly from all on the Select Committee—dealing at length with the details and principles of the measure; and in these speeches we have had laid bare, at least I trust so, the thoughts and intents of the heart of each speaker as to the main issues with which we shall have to deal in the further consideration of the Bill. I think I shall best consult the wishes of my hon'ble colleagues in Council, and certainly my own convenience, if I limit what remarks I have to make upon the present occasion to the practical issues which have been raised by the speech of the Hon'ble the Maháráját of Durbhunga, and by the speech of my hon'ble friend to the left who ably represents the British Indian Association and the zamíndárs of Bengal. All or most of the other points to which allusion has been made in the course of this debate will arise on a consideration of the various amendments which are upon the notice paper; and for myself I would prefer to deal with these in detail as they arise rather than by the running commentary of a general statement.

"Now the definite questions which are immediately before the Council are contained in the addresses of the Hon'ble the Maháráját of Durbhunga and the Hon'ble Bábú Peári Mohan Mukerji. The Maháráját says the Bill should be abandoned because it is a bad one; and the latter contends that the Bill has been imperfectly and insufficiently considered, and that therefore it should be postponed for re-publication. Anticipating the formal notice which stands in his name on the paper, he wishes that the postponement should be for three months, but we are all aware that that practically means a postponement for nine months or one year.

"The Maháráját condemns the Bill, because, to use his own words, it was 'discredited and disowned by the Select Committee' on account of their want of unanimity as shown by the many dissents; and secondly, that the zamíndárs and raiyats are not agreed in regard to it; and lastly, that it is, of course, a gross breach of the solemn promises made by the Government in the Permanent Settlement. Now I do not think that the absence of union in the views of the Select Committee need distress the Maháráját so much as it appears to do. We are dealing here with a very large measure; indeed, we may say that no larger measure has been under the consideration of the Government since the days of the Permanent Settlement. It is a measure also involving very deep and abstruse questions—questions which go back to a period even before the time of the Permanent Settlement; and it is complicated with innumerable details in all the relations between the landlord and tenant. It seems to me, having regard to the character of the legislation contemplated, impossible to have expected that union and unanimity in the opinions of the Committee which the Maháráját so strongly desires. For, if we look at the composition of that Committee, we see at once what a variety of different local experience and interests they represent. You have the representatives of landlords of both sections of this great province of Bengal, of the landlords who have and own property both in Bengal Proper and in Behar, the circumstances and conditions of which vary in many important particulars. Then you have the hon'ble member from the North-Western Provinces, who brings to the consideration of the problem a very practical knowledge of the land system which exists in those provinces. We have also traditions of the Board of Revenue influentially represented by the Hon'ble Mr. Reynolds; the statistical research and information which have affected so many of our decisions in the person of Dr. Hunter; and the special usages and customs in which the Muhammadan community are interested; and lastly, not least, the influential opinion and support which my hon'ble friend Mr. Gibbon has brought to bear upon the whole subject, speaking in the interests of European planters, and as himself the manager of extensive landed properties.

"Having regard, then, to the constitution of the Committee, and to the well-known and admitted fact that there are wide differences in the circumstances of different parts of the province, the demands for a complete unanimity in the Report seem to me unreasonable.

"Then, as to the dissents themselves, I think an examination of them will tend to show that there is no such force in the expression of their differences as is sought to be attributed to them. I will take my own first, though I do not put it forward from any idea of its special importance, nor from any sense of its claim to priority having regard to my position as the head of this Administration. But it will perhaps best illustrate what I mean. The nature of my objection is that there are certain mattters, such as the abolition of the 'prevailing rate' as a ground of enhancement, the adoption of a gross-produce limit of rent, and some plan for the better security of the non-occupancy-raiyat, which, if included in the Bill, would have greatly improved it. The majority of the Select Committee thought otherwise; but this is no reason why I should reject the Bill as it is submitted to the Council. I think there is a great deal in the Bill as it comes before us which is in advance of the legislation of 1859. There have been considerable improvements in many respects which I gladly accept. If I cannot have my own way in everything, still I am not going to reject what the Bill contains because I cannot have my own way altogether. I take it that this is very much the view of Mr. Reynolds, who regards the Bill as an instalment of a more complete measure. So, if regard is had to the dissents of the Hon'ble Members Mr. Hunter and Mr. Amír Alí and Mr. Gibbon, though they severally raise points of considerable importance, I think you will find that they are more or less upon matters of detail, which will be fully dealt with under the amendments to be considered in Council; but whether they were rejected or accepted, they are not of that vital character which would justify us now in endorsing the Mahárájá's recommendation to abandon the Bill. Of course, I am aware from the dissents of the two hon'ble Native members that they go to a greater length than the others, and will concede to no compromise. They seem now to say 'We do not want a Bill of this kind at all; we live under the best possible of all Governments, and we have the best possible of all rent laws, and we do not want any modification of them. We very much prefer the existing state of things to any change which goes in the direction of this Bill.' This seems to me the attitude of the zamíndárs represented by the two hon'ble members at the present moment; but after ten years of labour devoted to the subject, and the general agreement to which the majority of the Select Committee have come in favour of the kind of legislation which the Bill contains, any idea of abandonment seems out of the question. I think it will be clear to any one who will take the pains to analyse the several dissents, that, with the exception of the zamíndári members who stand out, notwithstanding the numerous concessions which have been made to their views, for an absolute concession to all their claims, that, admitting a variety of opinion upon particular points (and they chiefly refer to points expunged from the Bill in deference to the views of the majority of the Committee, and the removal of which should rather conciliate the extreme section on the side of the zamíndárs), there is a general concurrence in favour of the Bill; that it is considered to be a great improvement upon the Bill which was presented to the Council last year; and that they are quite willing to accept it, though it does not contain all that they wanted.

"I would now allude to the argument of the Mahárájá of Durbhunga that the zamíndárs and raiyats do not agree upon the matter. He says that the Bill neither satisfies the zamíndár nor the raiyat; and he implies rather than declares that an absolute Government and a packed Council were forcing an obnoxious piece of legislation upon all the landed classes in Bengal. Evidently what the Mahárájá wishes us to infer is that the zamíndar and the raiyat are at one in the matter and want one and the same Bill. Nothing, however, can be more certain than the fact that the zamíndárs look upon the Bill from one extreme, and the raiyats from the opposite extreme; and there can be no doubt that, if the Government had to wait till the raiyat and the zamíndár were agreed in a common view upon the character of the legislation upon such a wide subject, we should have to wait for that prophetic period when the lion and the lamb shall lie down together, and the millennium shall have dawned in which it may be hoped that there will be no need for legislators nor land bills. Will not the Mahárájá accept the fact that where the zamíndárs assert an extreme position on one side and the raiyats on the other to such an extent that I have, within the last few hours, received telegrams from

a large body of them urging me to sign no Bill which will not grant their full demands, the only right way is to accept as a settlement that which has been adopted upon the recommendations of the majority of the Select Committee? For my own part I am prepared to surrender my predilections in deference to the results of the Committee's deliberations and decisions, in respectful submission to the views of the Government of India, who, it seems to me, must by necessity be the final arbiter of the questions which arise in a matter involving such large issues, and especially in consideration of the position of the eminent statesman, His Excellency the present Viceroy, upon whom has devolved, within a few weeks of his assumption of the administration of this great Empire, the very difficult task of disposing of a question of such magnitude.

"I must now refer to the contention of the hon'ble member who has urged that the Bill has been insufficiently considered, and who in support of that contention has brought forward arguments which I think we have often heard before; and I have little doubt that, if we yielded to his wish for a postponement, we should have just as great difficulties a year hence in reconciling the interests and claims of differing sections as we have had in the past and as we have at the present moment. The truth is that the hon'ble member wants to impose upon us the labours of Sisyphus. We have no sooner rolled the heavy block to the top of the hill than we are asked to roll it down again; only in our case, unlike that of the unfortunate king upon whom this penalty was inflicted, each year adds to the weight of the burden and enhances the difficulty of the task. The request of the hon'ble member cannot be justified; certainly not on the ground of insufficient consideration. Upon this point I don't know that I can add anything to the force of the statements made by the hon'ble member in charge of the Bill, who has shown that this Bill has undergone longer and more thorough consideration than any measure of the kind which has ever been placed before the Council. If any one doubts this, I would refer him to the first thirty-five paragraphs of a despatch which the Government of India sent home on the 21st March, 1882, to the Secretary of State. Although that paper is now only three years old, it is an almost forgotten part of the extensive literature of the Bill; but if any one wishes to learn the facts he will find in the passages to which I have referred a full history of the origin and progress of the measure. The fact is that very soon after the law of 1859 was passed it devolved on the administration of Sir William Muir, who was then Lieutenant-Governor of the North-Western Provinces, to recommend an amendment of it. It has since then been before four successive Lieutenant-Governors of these Provinces, and that represents a considerable period of time, perhaps not less than 15 years. Sir George Campbell especially took up the matter with the view of checking the illegal exactions going on in Orissa and the very serious complaints of oppression in Behar. Sir Richard Temple had to deal with grave agrarian riots in Central and Eastern Bengal; so serious were they that an Act of the legislature was passed to control and suppress them, and to prevent their recurrence in future. From that time excitement on the subject became so intensified that Sir Ashley Eden had to appoint two Commissions to consider the whole subject of the revision of the law of landlord and tenant. The Bill submitted by the united Rent Commission of both Bengal and Behar was subjected to further revision by the Hon'ble Mr. Reynolds in conference with different local authorities, and the Bengal Government under Sir Ashley Eden eventually submitted their proposals to the Government of India. I can speak with personal knowledge when I say that these proposals underwent a detailed and thorough criticism at the hands of His Excellency the late Viceroy in Council, whose final conclusions were forwarded to the Secretary of State in a historical despatch of March, 1882. Those who contend that this Bill has not had the same time and care bestowed upon it as the Penal Code and the Permanent Settlement Regulations are quite mistaken. It may be the case that the Penal Code was under consideration for many years before it was passed, but it should be remembered that after its first introduction it was left in abeyance for a long period, and moreover the codification of the criminal law was a new subject in this country; while, as regards the Permanent Settlement, the period during which it was under

enquiry was, I believe, not nearly so long as the time which has been given to this Bill. It is clear from the records of the day that Lord Cornwallis intended at first to make a decennial settlement as an experimental measure on which a permanent settlement might be based; but so impatient was he to secure the enactment of the measure before his period of office expired, that he passed it before even the assent of the Court of Directors had been obtained to his proposals; so that what was intended in the first instance to be only a decennial settlement came into operation as a permanent settlement. I am, however, attacked by the hon'ble member (Bábú Peári Mohan Mukerji) as to what took place in my own Council with regard to a Bill for the appointment of kanungos and patwáris, in the course of the discussion upon which I expressed the opinion that great darkness prevailed with regard to all the relations of landlords and tenants; and he asks, with reference to this, how can I press forward a Bill of this character, while I plead the existence of such gross general ignorance upon all material facts bearing upon the subject? I need not enter here into a discussion of the merits of that Bill. It is acknowledged to be a measure subsidiary to this Bill. If the chapter in this Bill which relates to the survey and record of rights falls through, the Patwárí Bill in the Bengal Council will not be proceeded with. But it must be obvious to every one that if a cadastral survey and preparation of a record of rights is to form a material part of the present legislation,—and I would sooner abandon many parts of the Bill than that,—there must be some recognised agency to record the changes which take place from time to time, or else the results of that survey and record will be thrown away in a few months. Now, when I complain of the darkness and ignorance which prevail as to the relations between landlords and tenants, I allude to those kinds of facts of which no one has given us a more direct and practical illustration than the hon'ble member himself. The members of the Select Committee will remember that when we were dealing with some questions as to providing a form of receipts for rent in connection with this Bill—a form which was to show the name of the tenant, the quantity of land he held, and possibly the boundaries of it, the rent he paid, and simple details of that nature—the hon'ble member opposed the proposal on the ground that not one zamíndár in a hundred would be able to give such information. I say that if the zamíndárs do not know the names of their tenants, and the land they hold, and what rent they pay, we are in grosser darkness than I could have conceived possible. Now a survey and record of rights would give authoritative information on all such points as these. But the possession or non-possession of that knowledge certainly does not affect the merits of a measure like this, whose primary object is to declare and establish the rights of tenants in their relations to the zamíndár, and to try and secure to them greater fixity of tenure, and to afford them some protection against continuous and unlimited enhancements. The issue here which the hon'ble member raises, and which he has a perfect right to raise, is that the Government has no business to attempt any such thing; but the right or wrong of Government intervention depends altogether on the interpretation of the Regulations on which the Permanent Settlement was framed. We all know that there is a great deal of difference in opinion regarding that important settlement. The zamíndárs contend that in dealing with this Bill as we are doing we are depriving them of those rights which were guaranteed to them by the British Government in the beginning of this century; and the argument is used that, as the claim of the zamíndár to do just as he likes with his own is indefeasible, they will accept nothing else and nothing less. I never could admit the validity of such a plea. The contention is a very one-sided view of the Permanent Settlement, for I think that, if you examine Regulations I to VIII of 1793, you will find that there is nowhere throughout them anything more in the way of a promise than the single promise that the public demand on the land should be limited in perpetuity. The reasons for adopting that principle we know, because they are recorded in the Regulations. That promise, notwithstanding grievous provocations, has been kept for all these 90 years, and it will remain inviolate. But I assert most strongly that to urge that the whole Permanent Settlement was passed in the interests of the zamíndárs is a very one-sided aspect of the case. For, apart from the very strong reservation which the Government recorded at

the time that it would, whenever it thought fit, legislate for the protection of the cultivator, we have express mention in those Regulations of the positive rights of the raiyats. It may be true, as the hon'ble and learned member (Mr. Evans) said the other day, that the settlement of rents between the raiyats and zamíndárs was, in 1793, a matter to some extent of contract. But two things in this connection have to be borne in mind—that the competition in those days was for raiyats to clear and cultivate the land, and the zamíndárs naturally had a motive for leniency; and secondly, there was, as found in the Regulations, the absolute barrier against undue exactions of the parganá rate which was known and respected in every district.

"I know that the zamíndárs in dealing with interpretations regarding the Permanent Settlement are very unwilling that any reference should be made to contemporary history. They have openly said so in a public document. For my own part I do not see how we can avoid a reference to contemporary opinion when we have to interpret an important Act like the one under notice; and we are justified in looking to what eminent men of the time said on this point. There is valuable evidence on the subject scattered among the pages of contemporary writings, and I will read to the Council some extracts bearing upon the issue to which I have referred:—

'Sir Philip Francis, in a Minute written in 1776, considered that the rate of assessment per bígha should be fixed for ever upon the land, no matter who might be the occupant.

'Warren Hastings wrote in the same strain on 1st November 1776—"Many other points of enquiry will also be useful to secure to the raiyats the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions,"—the term "exactions" from raiyats signifying in that day the levy of more than the established parganá rate of rent.

'Sir John Shore, in the same spirit, was not content that the Permanent Settlement should be with the zamíndár alone. He observed: "And at present we must give every possible security to the raiyats as well as, or not merely, to the zamíndár. This is so essential a point that it ought not to be conceded to any plan." The Court of Directors on 19th September, 1792, approving of these views, recognised it as an object of the Perpetual Settlement that it should secure to the great body of the raiyats the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, which we mean to give to the zamíndárs themselves. Twenty-seven years later, the Court, on 15th January, 1819, deliberately re-affirmed:—"We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zamíndár in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him."'

"Nothing, it seems to me, could be more conclusive of the privileges and position of the raiyats than these statements. They indicate at least the intentions of those in authority when the Permanent Settlement was made, and if was a misfortune for the country that they were not carried out at the time. The agitation which has been going on now for several years brings the case to a climax, and demands a final settlement on the lines of this Bill. I shall certainly support the motion that the Bill be taken into consideration, and shall oppose most strongly any motion for postponement. I am quite certain that we incur a risk in putting off the final settlement of this question; and I trust the zamíndárs will understand that it is the settled policy of the Government that the right of the raiyat to hold his land is as clear and undisputable so long as he pays a fair and reasonable rent, as is the right of the zamíndár to hold his estate so long as he pays his revenue."

The Hon'ble MR. ILBERT said:—

"MY LORD,—I do not propose at this stage of the debate to discuss point by point the objections which have been brought against the particular provisions of this measure. But there are two criticisms of a general character about which I should like to make some remarks, and I shall have a few words to say on the question of urgency, which, though it is raised more directly by the motion which stands in the name of my hon'ble friend Bábú Peári Mohan Mukerji, has been discussed in connection with the motion now technically before the Council. Of the two criticisms to which I have referred, one is that the Bill has been so changed by the Select Committee as to have lost its fundamental characteristics, and the other is that the Bill

as now revised does not possess those qualities of completeness and finality which are essential to good legislation.

"I do not wish to minimize or underrate the importance of the changes which this measure has undergone, not merely since the date of its first preparation by the Rent Commission, but since the date of its introduction into this Council; but I do undertake to say that those changes are fully explained and justified by the circumstances under which the Bill was prepared and introduced, and by the nature of the subject-matter with which it deals, and that they do not in any way warrant the charge that the Bill in its present form involves a departure from the principles on which it was originally based, or that the Select Committee have lost sight of or abandoned the objects which the Government of India had in view.

"This Bill, as we all know, took its origin in a draft which was framed by the Bengal Rent Commission. Now, what was the nature and scope of the task which the Rent Commission undertook? It was a task of no ordinary magnitude. It was a task singularly arduous, ambitious and comprehensive. They undertook to frame a law of landlord and tenant which should be applicable to the whole of Bengal and Behar, with certain exceptions. They proposed to make important alterations in that law. They undertook, in so doing, not merely to amend the existing Acts and Regulations, but to repeal them and to re-enact them in a consolidated form with the necessary modifications. And last, but not least, they proposed to codify the whole of the judge-made law on the relations of landlord and tenant in the Lower Provinces. In short they undertook, at one and the same time, to amend, to consolidate and to codify. Now, in dealing with so difficult and delicate a subject as the law of landlord and tenant an ordinary legislator thinks himself fortunate if he achieves with some degree of success any one of these three objects: that he should be able to achieve them all is more than any mortal is entitled to expect. Accordingly, when the Government of India came to consider from the point of view of practical legislation the Bill submitted to them by the Bengal Government,—which was in fact the Rent Commission Bill with sundry modifications,—one of the first conclusions at which they arrived was that it would be desirable to drop so much of it as merely codified existing law, and to leave the measure one of amendment and consolidation. I will not trouble you at length with the reasons which led me among others to this conclusion—a conclusion about the soundness of which I have never had any doubt. They were reasons which did not involve the slightest disparagement of the admirable work which had been done by the learned author of the Digest of the Law of Landlord and Tenant in Bengal, and did not imply any scepticism as to the value of codification, or as to the importance of continuing the great work which has been commenced for India by the framers of our codifying Acts. Shortly stated, the reasons were these. Apart from any doubt which we might feel as to the expediency or possibility of attempting to present in a code the effect of judicial decisions on subordinate rules or propositions of law, it was clear that up to this time the process of codification had only been applied with success to those portions of the English common law which are suitable to the circumstances of India; the general principles of the English law of landlord and tenant had quite recently been codified by my learned predecessor Mr. Whitley Stokes in that chapter of the Transfer of Property Act which relates to leases; and the legislature on passing that measure into law had expressly declared that this chapter—the chapter relating to leases—is not suitable to the relations which exist between landlord and tenant in the Mufassal. Furthermore, we held that, even if the law with which we had to deal admitted of codification, it was of the first importance to simplify and reduce in bulk as much as possible the long and complicated measure which had been laid before us by the Government of Bengal. Accordingly, as I have said, the merely codifying portions of the Bill were dropped, and, as I hold, wisely dropped; but the mere fact that this measure once professed to be a Code has given it an appearance of completeness and finality which was always illusory, and which has had an unfortunate effect.

"Even in its reduced form the Bill was sufficintly long and complicated, and was in a shape—I am speaking merely of form and not of substance—was in

a shape which would have made an English Minister reluctant to submit it to Parliament. For it is a received maxim of English legislation that when you have important changes to make in the law—changes which are likely to encounter much opposition or to invite much discussion—you should not attempt to combine the two processes of amendment and consolidation, because by so doing you divert the attention of Parliament and the public from the real issues before them. You raise questions which have been already settled or are of minor importance, and you thus materially impede and embarrass the passage of the measure through the House.

"In this country, where the machinery of legislation works more easily and smoothly, it has always been held—whether it will continue to be so held if we have many more such notice-papers as that which has been laid on the table with reference to this Bill I cannot say, but at all events it has always been held—up to this time that the advantages to the public of consolidation outweigh what may be called the tactical disadvantages of presenting a too widely extended front for opposition and criticism; and accordingly we have, as a general rule, whenever we have had to make extensive changes in the law, applied the process of repeal and re-enactment. The Government of India did not think that they would be justified in the present instance in departing from this practice, but at the same time I am bound to confess that in the course of the discussion of this measure I have found abundant reason for appreciating the practical wisdom of the English rule. For there can be no doubt that the form in which this Bill has come before the public has tended to obscure the main issues which are raised by the present legislation, and has roused many of those ghosts of buried controversies which still hover and shriek round the Permanent Settlement Regulations and Act X of 1859. Let us endeavour to abstract our minds from those parts of the Bill which merely reproduce existing law, and those parts which embody miscellaneous amendments of minor importance, and consider what were the main defects in the existing law which the Rent Commission proposed to remedy, and what were the main remedies which they proposed to apply for the removal of these defects. The main defects were two: first, that the existing law gave, or appeared to give, to the raiyat rights which he could not prove; and secondly, that the law gave, or professed to give, to the zamíndár remedies which he could not enforce. Whether, by reason of any deliberate policy of shifting tenants' holdings, or by reason of local customs of cultivation, or by reason of the absence of proper landmarks, but at all events in fact the raiyat was unable to prove that kind of twelve years' occupation which was necessary to give him occupancy-rights under Act X of 1859. And the zamíndárs found the process of recovering their rents through the Courts tedious, and the process of enhancement through the Courts unworkable. Want of adequate legal security for the raiyat, want of adequate legal facilities for the landlord—those were two substantial defects which were made the subject of repeated complaints before the Commission. And at the same time that the Rent Commission admitted that there were in the existing law these defects, which impaired its efficiency as a law and prevented it from achieving the objects which it was intended and expected to achieve, the Famine Commission, looking at the subject from a somewhat different point of view, came to much the same conclusion with respect to one of these defects, and pointed out that the absence of adequate legal security for the tenant had produced and was producing disastrous economical effects.

"These, then, were the practical problems which the Rent Commission—sitting, not as codifiers or as consolidators, but as amenders of the law—had to solve:—whether they could devise in the interest of the tenants more effectual checks against liability to capricious eviction and excessive rackrenting; whether they could devise in the interest of the landlords more effectual facilities for the ascertainment and recovery of their just dues. Reasonable security for the tenant, reasonable facilities for the landlord—these were the two things which they had to endeavour to provide. Suggestions for attaining these objects poured in upon them in great abundance, and from very different quarters. It was their duty to consider these suggestions; to sift

them carefully; to view them in the light of different interests and different experiences; to recommend them for adoption if they appeared to be reasonable and practicable; to reject them if they appeared to be unreasonable or impracticable. And that, Sir, is the history of this measure from its first inception to the present time. The process which has been continuously applied to it has been a careful sifting of numerous suggestions which have been put forward with the view of meeting certain specific evils. The Government of Bengal took up the suggestions of the Rent Commission, made them the subject of a very careful examination, and then transmitted them with modifications to the Government of India. The Government of India examined with equal care the suggestions laid before them by the Government of Bengal, and, with the approval of the Secretary of State, embodied in the Bill which was introduced into this Council such of them as appeared to afford a reasonable prospect of working with success. That in the course of this process the measure should have undergone considerable modification is no matter for surprise, but at the same time is no ground of blame to the Rent Commission, no cause for imputation against the Government of India or the Select Committee of this Council. The Rent Commission would have been much to blame if, in the exercise of the duties imposed upon them, they had rejected any suggestion which appeared on the face of it to be reasonable: the Government of India would have been equally to blame if they had not incorporated in their original Bill such of the proposals laid before them, as, with the information then at their disposal, seemed to offer a fair prospect of meeting the requirements of the case; the Select Committee would have been still more to blame if they had obstinately stuck to these proposals, or had adopted any alternative suggestions which might be subsequently made by the Bengal Government, after further inquiry and examination had thrown grave doubts on their fairness or feasibility.

"There is another circumstance which has not a little obscured the real nature of the changes which have from time to time been made. In the course of the discussions which take place on a measure of this nature, ranging as it does over a considerable ground, and affecting a great variety and number of interests, it always happens that some particular proposal assumes a factitious importance, and comes to be described, in varying metaphors, as the keystone or core or kernel of the Bill. I always distrust these phrases. They usually mean that some particular feature of a measure has happened to strike the imagination of some particular writer or set of writers, to coincide specially with his or their sympathies or prepossessions, or to assume exceptional prominence from some one point of view, and when it disappears or assumes a less prominent position a cry is raised that the measure is irretrievably ruined, and that it is no longer of any value.

"There have been a good many keystones and cores and kernels of the Rent Bill. There was a time, in the earlier discussions of this measure, when the proposal most in vogue was a proposal which not unnaturally found favour in zamíndári quarters, a proposal to devise some kind of summary procedure for the recovery of rents. This was to be the be-all and end-all of legislation on the subject of landlord and tenant. 'Give us back our Hufftum and our Punchum,' said the zamíndars, 'and all will be well. Or, at all events, if you cannot do that, put the raiyat who is sued for rent in the same position as if he had signed a bill of exchange, that is to say, had agreed in writing to pay a specified sum of money to a specified person at a specified time.' This was a form of 'facility' which was much discussed by the Rent Commission, and the conclusion to which they came about it was substantially the same as that which was subsequently arrived at by the Government of India. I spoke at such length on this topic in obtaining leave to introduce the Bill that I may be pardoned for not dwelling on it at any length on the present occasion. The conclusions to which we came were in short these; not that the difficulties complained of by the landlords were non-existent, but that the remedies suggested were superficial; that where the rights involved are obscure and uncertain, and the facts difficult to ascertain, no mere tinkering of procedure would provide a method of judicial de-

termination which should be at once speedy and just. But at the same time I expressed a hope that when the measure came to be fully discussed other expedients for simplifying the procedure might be devised. In the course of the long discussions which have since taken place sundry suggestions for that purpose have been made; some of these were brought before the Select Committee by my lamented friend the late Rai Kristodás Pál; others have been embodied in a paper written by Bábú Mohini Mohan Roy, who was himself a Member of the Rent Commission; others again have been communicated to me privately by my friend the Mahárájá Sir Jotíndra Mohan Tagore. The Select Committee have not overlooked or disregarded any of these suggestions. On the contrary, they have given them their most careful attention. We invited judicial officers to examine them and express their opinions upon them, and we specially referred them for the consideration and opinion of the Calcutta High Court. But the replies which we have received have been unfavourable to these suggestions. We have been told, and told on the highest authority, that they could not be adopted without serious risk of failure of justice. Under these circumstances it was impossible for us to endorse recommendations which had by the authority most competent to express an opinion upon them—I mean the Judges of the Calcutta High Court—been unanimously and decisively condemned. It would have been a satisfaction to the Members of the Select Committee, as it would have been a satisfaction to the Hon'ble Judges, if we had been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means too often employed by raiyats to harass their zamíndárs. But in the face of such strong and authoritative expressions of opinion that these suggestions were dangerous or impracticable, we could not take upon ourselves the responsibility of recommending their adoption Some minor amendments of procedure we have indeed proposed, and I believe that they will be found useful as far as they go.. But I fully agree with the deliberate opinion of the Rent Commission and of the High Court that it is in other quarters than the amendment of procedure that the true remedy for difficulties in the realization of rents is to be found. Some of these remedies can, as the Judges point out, be provided by executive action; means of providing others are supplied by this Bill; and it is to the machinery that we propose to provide for the ascertainment and recording of obscure and disputed facts and rights that the zamíndárs, if they are properly advised, should, I believe, look for a removal of the difficulties which they now experience in enforcing their rights.

"On this point, then, the views of the Select Committee are in complete accordance with those of the Rent Commission and with those which the Government of India entertained and expressed on the introduction of this Bill.

"But with respect to other matters I freely admit that, in the course of the deliberations which have taken place on this measure, the Select Committee have found themselves compelled to drop certain proposals to which at one time considerable importance was attached by their authors, and from which considerable advantages were expected to accrue. Take, for instance, the proposals as to the preparation of tables of rates. These proposals formed a very prominent feature of the Bill which was submitted to the Government of India by the Bengal Government, and they were incorporated by the Government of India in their original Bill, though not without expressions of great doubt as to their feasibility. There was a great deal to be said for these proposals, and, if they had proved capable of being carried out, they would have simplified many questions and removed many difficulties. Therefore, I think the Government was fully justified in inserting them in the Bill which was laid before this Council two years ago, and that they were entitled to a fair trial before being rejected as unworkable. The Bengal Government did give them a fair trial; they deputed special officers to try and prepare tables of rates on the lines indicated in the Bill; and the result of their inquiries and experiments was to satisfy both the Bengal Government and the Select Committee that the expectations once based on this particular scheme were not likely to be realized. Very similar has been

the fate of the gross-produce limit. This particular proposal did not, if my memory serves me rightly, figure very largely in the earlier discussions on this measure; it was adopted by the Rent Commission, but without, as it appears to me, any adequate examination or consideration of the difficulties by which it was attended; it formed also part of the proposals embodied in the Bill introduced by the Government of India; but whilst I do find in the papers and speeches relating to the Bill indications of doubt as to the possibility of imposing any such general limit, or as to the propriety of the particular limit proposed, I do not find anything to show that it was regarded two years ago as being an essential feature of the measure. It was not until a comparatively late epoch that it attained the dignity of being described as the 'core' of the Rent Bill. Now, it must be admitted that it would be eminently satisfactory if we could devise some form of ultimate barrier against which the waves of rackrenting should ineffectually dash; and when the subject was discussed in the Select Committee—and it underwent a very full and thorough discussion before the Committee—there was a strong feeling on the part of the majority of the members in favour of imposing such a limit, if only a fair and workable limit could be devised. But when we proceeded to examine the facts and figures on which the particular fractional limit proposed in the Bill was based, we considered them insufficient to warrant the inferences drawn from them, and at the same time we were informed by the Bengal Government that to fix the limit at any other fraction would be to provide an ineffectual protection against that form of rackrenting which it was the object of the limit to counteract. Under these circumstances we reluctantly came to the conclusion that this was a form of check which we were not in a position to impose.

"Take, again, those provisions of the Bill which have been the subject of more and hotter controversy than, perhaps, any other of its provisions. I mean those which relate to the transferability of the occupancy-right. The object of the Rent Commission, the object of the Bengal Government in the earlier drafts of the Bill, the object of the Government of India in the Bill of two years ago, was to recognize and legalize a practice which, whether for good or for evil, either had grown up or was fast growing up in all parts of these Provinces, but to surround it with such checks and limitations as might be considered necessary or advisable for the purpose of preventing it from being used to the detriment either of the zamíndár or of the raiyat. That, I repeat, was the object which we all had in view: we wished to recognize and confirm existing customs, to give them the express sanction of the law, but at the same time to give them a reasonable shape. We found, however, that the existing customs were so multiform that it would be impossible to devise any one general form of legal check on the right of alienation which might not reasonably be charged with causing hardship to the zamíndár in one part of the country, and hardship to the raiyat in another; and, this being so, the conclusion at which the majority of the Committee, after many intermediate experiments and suggestions, ultimately arrived was that, if varieties of custom were to be recognized at all, they had better be recognized in their entirety, and that the balance of advantages was in favour of leaving the custom, at all events for the present, unregulated by any express provision of law. In arriving at this conclusion individual members of the Committee, as would naturally be the case, reached the same goal by different paths. The question was an eminently arguable one, and was one as to which both the advocates of the zamíndárs and the advocates of the raiyat were much divided in their views,—I know for instance that the view taken of it by my hon'ble friend the Mahárájá of Durbhunga differed materially from that taken by my hon'ble friend Bábú Peári Mohan Mukerji,—and it had to be determined with reference not only to the consideration whether the right of transfer was in itself a good thing or a bad thing, but with reference also to such considerations as whether the advantages of having a positive and definite but inelastic rule outweighed the disadvantages incidental to an elastic but uncertain custom, whether the mahájan purchaser of whom so much has been heard was a reality or a bugbear, and last, but not least, whether any discouragement which might be imposed on the practice of sale would not operate as an encouragement of the practice of sub-letting. It was under the influence of all these different considerations that we came to the conclusion that with

regard to this particular matter the natural check imposed by custom and usage would probably operate better than any artificial checks which could, under existing circumstances, be imposed by law, and that the safer and more prudent course would be to abstain, at all events for the present, from positive legislation.

"There is no foundation for the suggestion that such a change as this involves a radical departure from the principles of the original Bill. Nor is there any foundation for the suggestion that we have by any of the provisions of the Bill as now revised violated any pledges which we gave on the introduction of this measure. We have been told that the power given to reduce rents in cases where a special settlement is made is inconsistent with the assurance that was given that there would be no reduction of existing rents. Now it is important to be accurate about what was actually said and written with reference to this point. On looking at our despatch of 17th October, 1882 (paragraph 17), I find that we explained our intention to be that a raiyat should not be at liberty to sue for a reduction of rent on the *sole* ground that it exceeds that indicated by the table of rates. The assurance was that rents were not to be reduced solely on the ground of their being above those shewn in the table of rates, and I need hardly point out that the Bill contains no provision inconsistent with this assurance.

"In my own speech on obtaining leave to introduce the Bill I referred specially to this point. What I said was this :—

'On a comparison of the provisions for enhancement with the provisions for reduction, it might be said that they have a somewhat one-sided appearance. The landlord can use the table of rates for the purpose of levelling up; the tenant cannot use it for the purpose of levelling down. But it must be remembered that the principle on which the Bill is framed is to proceed as far as practicable on the basis of existing rents, and that nothing is further from our intention than to bring about a general reduction of rents. Whether under exceptional circumstances and in special areas—such, for instance, as the area in Behar, where we learn from recent reports that the average rates all round have been enhanced by 500 per cent. in the last 43 years, whilst the area under cultivation has actually decreased, and the rise in prices during the same period has been at most 73 per cent.—it may not be necessary to take steps, if not for a reduction, at least for a re-adjustment of the rates of rent, is a separate and difficult question on which I will not enter now. But I repeat that proposals for a general reduction of rents form no part of the Bill.'

"I fail to discover in the Bill as now amended anything which is in the slightest degree inconsistent with any of the statements which I have just quoted. What we intend by the section to which reference has been made is that in very special and exceptional cases special and exceptional powers should be exercised.

"My Lord, I will not go through the other changes which have been made in this Bill since its introduction. The changes themselves, and the reasons for making them, have been fully and completely explained by my hon'ble friend Sir Steuart Bayley, and I have nothing to add to his exposition. I have listened sympathetically to the expressions of regret which have fallen from the lips of several hon'ble members for some of those changes; but I have heard nothing which has satisfied me that the grounds on which they were made were not good and sufficient, or that the arguments which have weighed with the majority of us in the Select Committee are likely to produce a different effect when brought forward in Council. What I wish specially to guard against is any confusion between means and ends, between matters of principle and matters of detail. Where we have seen fit to modify our views we have modified them not with respect to the general principles by which our legislation should be guided, not with respect to the objects at which we ought to aim, but with respect to the particular means which it may be necessary, expedient or advisable to adopt for the purpose of attaining those objects. The objects which we had in view in introducing this legislation were the objects which we have in view now, namely, the provision of reasonable security for the tenant, of reasonable facilities for the landlord. As to the particular form and degree of the securities or facilities which the circumstances of the case justify or require, that is a question with respect to which we may justifiably modify our views in the light of further experience and inquiry. We have given a little more in one direction, a little less in another; but the

general scope and tendency of our proposals remains what it was. Thus in dealing with the occupancy-raiyat we have lessened the area over which his rights may be acquired, but we have, at the same time, facilitated the proof of the rights to which he is entitled within that area. We have removed some of the checks to which enhancement of his rent was subjected, but at the same time we have tightened others, and have extended the period during which he is to have absolute immunity from all enhancement. Again, in dealing with the landlord, we have declined to adopt suggestions which have been made to us for taking away from him any ground of enhancement through the Courts to which, from long usage or otherwise, he may reasonably claim to be entitled. We have declined to adopt any suggestion which would have had the effect of making any of those grounds unworkable, and thus of perpetuating what has been justly described as a public scandal; we have endeavoured to give the landlord a right which could be honestly enforced through the machinery of the Courts and not dishonestly abused as an engine of oppression out of Court; and we have endeavoured to assist the Courts by indicating somewhat more clearly than under the present law the circumstances under which, and the limitations subject to which, the landlord's remedy is to be applied.

"With reference to these and several other provisions of the Bill, the question has usually been a question not of principle but of degree—a question where we should draw the line between conflicting claims, and, as is usual with boundary disputes, our decision has not been accepted with satisfaction by either party. The question which you are entitled to ask is, 'What is the net result of our proposals?' Do they give too much or leave too much to one side or to the other? The question is *not* 'Does the Bill satisfy the expectations, reasonable or unreasonable, of one party or of the other party?' but does it—to use a phrase to which some of our critics appear to entertain an insuperable objection—does it afford a fair and equitable solution of an exceptionally difficult problem, a fair and equitable compromise between claims which are conflicting and irreconcileable? What we have endeavoured to frame has been not a landlord's Bill, nor a tenant's Bill, but a just Bill. We have endeavoured to give substantial security to the tenant without restricting more than is necessary the powers of the landlord. We have endeavoured to give reasonable facilities to the landlord without weakening more than is inevitable the customary privileges of the tenant. Whether and how far we have succeeded in our endeavour is a question which I leave to persons of cool and dispassionate judgment to determine. After hearing the vehement and angry denunciations by which we have been assailed on either side, they will, I am disposed to think, come to the conclusion that the Government of India has not ill discharged the duty which was imposed upon it of acting as a just and impartial arbiter between conflicting claims.

"I deny, then, that the Bill which is now laid before you involves a departure from the principles by which the Government of India was guided in its introduction. What foundation is there for the other charge to which I have referred, that it is wanting in completeness and finality? 'I had hoped,' says His Honour the Lieutenant-Governor, in his minute of dissent, 'that the legislation now in hand would have carried with it some measure of finality'; 'but,' he goes on, 'in its present outcome there is scarcely the assurance which had been expected of a final settlement of many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.' 'I am unable,' says my hon'ble friend Mr. Reynolds, 'to regard the Bill in the form which it has now assumed as an adequate and final settlement of the question raised in this great controversy.'

"Sir, in one sense I admit the charge. That the Bill is one-sided, I deny: that it is not complete or final I will admit. But I will go further and say that any Bill of this kind which claimed for itself the characteristics of completeness and finality would carry its condemnation on its face. Look at the social and economical condition of Bengal at the present day. What are its most striking features? Are they not transformation, transition, growth and change? Here, as elsewhere in India, and here perhaps, more than anywhere else in India, you find the past and the present, old

things and new, brought into sudden and violent contact with each other, with results which are often unexpected, and which, unless there is some intervention to temper the shock, may be disastrous. You have been told with truth—and the truth is one which cannot be too often repeated or too strongly insisted on—that the Bengali raiyat is not the same thing as the English farmer, that the Bengali zamíndár is not the same thing as the modern English landlord, that the rules which govern, and should govern, the relations of zamíndár and raiyat are not those rules of the law of landlord and tenant with which the modern English lawyer is most familiar.

"The Bengali raiyat is not the same thing as the English farmer; he is something widely different from him. But he presents many curious and instructive points of resemblance to the English customary tenant of some six or seven centuries ago. The rights and powers claimed by the zamíndár are not unlike those once claimed by the feudal lord of the manor; the privileges, duties and liabilities of the raiyat resemble in some important particulars those which once belonged to the English customary tenant, and which were gradually developed into the status either of the free-holder or of the copy-holder. In the phrase which is still technically applied to the English copy-holder, namely, that he holds 'at the will of the lord according to the custom of the manor,' we discern echoes of the controversies which once raged round the customary tenant of the English manor, and which still rage round the position of the Bengali raiyat—controversies in which the assertion of high proprietary rights on the part of the landlord is set against the assertion of strong customary privileges on the part of the tenant. If we were to pursue the investigation further we should find equally suggestive analogies. The bewildering multitude of tenures with local variations of nomenclature and incidents finds its parallel in the multitude of subordinate interests in land which are recorded on the Domesday survey, the English record of rights of the eleventh century. Again, it is well known that there is no point in English legal history which is more obscure than the question of the extent to which, and the circumstances under which, alienation of land was legally recognised and actually took place before the 13th century. But in the midst of this obscurity one fact is clearly established, namely, that such alienation as took place assumed the form not of sale but of sub-infeudation or sub-letting, and that the extent to which this sub-letting was carried was distasteful to the superior landlords. We know that at the instance of the great lords a famous statute was passed to stop sub-letting; we know that while the intention of the statute was to stop sub-letting its effect was to legalize free sale, that it enabled the fee-simple tenant to alienate his interest without consulting his lord, and that it has since become the foundation of the modern English law of the sale of land. If there had been a Hansard in the days when the Statute 'Quia Emptores' became law, he might perhaps have supplied us with an additional arsenal of arguments for and against the comparative merits and demerits of sub-letting and free sale.

"However, I do not intend to weary the Council with any elaborate historical disquisition. My object in touching on these analogies between the past and the present is not to demonstrate—what has been demonstrated to satiety—that the application of the modern English landlord and tenant law to the relations of zamíndár and raiyat would be both an anachronism and a political blunder, but also to illustrate some of the exceptional difficulties which surround any attempt either to declare or to amend the law bearing on those relations. For to say that the Bengali raiyat is still living in an age which to us Englishmen has become an age of the past, is to present only one side of the picture. There is another side to it. Side by side with the landlord who exercises, and is content to exercise, his old customary seignorial rights so far as they are compatible with the modern system of Government, we have the auction-purchaser who has bought his rights as a commercial speculation, and thinks only how he can turn them to the best advantage. Side by side with the hereditary tenant, cultivating and living on his land in the old traditional fashion, we have the enterprising planter, who has got his lease and wishes to work it so as to extract from the

land the greatest possible profit in the smallest possible time. The modern theory of competition rents is jostling the old practice of customary rates; the new fashion of terminable leases is threatening to displace ancient occupancy-rights. The thirteenth century is being brought face to face with the nineteenth century, and is striving with more or less success to understand and accommodate itself to its ways. The cultivator for subsistence is giving way before, or developing into, the cultivator for profit; those who have hitherto walked in the dim twilight of custom are emerging into the hard and fierce glare of law as administered by the Courts. The ideas, habits and customs of widely different ages and widely different civilization are being thrown into a common crucible, and are assuming new and strange forms. We cannot arrest this process of change; we cannot predict with certainty the rate at which it will progress or the direction which it will take if left to itself. All that we can do is to endeavour by such means as are at our disposal to guide it in the right direction; to ease off the abruptness of the transition from the old to the new, from an age of feudalism to an age of industrialism; to bridge over the interval between status and contract; to prevent custom from being ousted too violently by competition; to see that rules of law based on commercial transactions between hard and keen men of business are not applied to the ignorant and unlettered peasant before he is able to understand them or to use them.

"Can we afford to stand aside and let things drift, trusting that they may somehow come out right in the end? Such may be a policy which would commend itself to some of the influential classes in this country, to men of the strong hand and the long purse; such is not a policy which the British Government of India has ever ventured, or can ever venture, to adopt; such is not our conception of the duty which we owe to the millions whom Providence has confided to our care. We are responsible for the introduction into this country of forces which threaten to revolutionize and disintegrate its social and economical system; we cannot fold our hands and let them work in accordance with nature's blind laws. We must, to the best of our ability, endeavour to regulate and control their operations, and in so doing it is inevitable that we should occasionally interfere in a manner and to an extent which, to those whose institutions have not, for long ages, undergone the strain imposed by foreign conquest or foreign immigration, may not unnaturally appear difficult to justify or explain.

"That in so doing we should be charged with ignoring or violating the laws of political economy is a matter of course. We do not ignore or violate those laws. On the contrary, the whole of our action as a State in legislation of this kind is based on a recognition and appreciation of the laws which regulate the production and distribution of wealth, just as the whole of our action as a State in dealing with famine is based on the recognition and appreciation of the laws, so far as they are discoverable, which regulate the recurrence of famines. We do not ignore these laws, but we proceed on the view that their operation is capable of being modified and controlled by human action.

"Assuming, then, that interference is justifiable and necessary, what kind of interference is possible and expedient, what kind of legislation is suitable to the circumstances with which we have to deal? Must we not admit, are we not always being compelled to admit, that it is a legislation of opportunism? For a transitional period final legislation is neither appropriate nor possible. What we have to do is to establish a *modus vivendi*, a working arrangement, not merely between conflicting interests, but between the customs, habits, ideas and ways of different ages and different forms of civilization. Our legislation must contain much that is in the nature of expedients, adjustments, compromises; it will inevitably contain provisions which will be to political economists a stumbling-block, and to lawyers—I will say even to law-lords—foolishness, but which, for all that, may be based on good sound common sense.

"Again, whilst fully acknowledging the necessity—the urgent necessity—of interference on some points, we can afford to admit the wisdom of non-

interference on others. There are some proposals about the expediency and suitability of which we can make up our minds with reasonable certainty; there are others about which we do not see our way so clearly, and with respect to which we should prefer to wait a while. There may be points—I frankly admit that there are points—with respect to which the provisions of this Bill are imperfect and incomplete, and with respect to which we are leaving our successors to supplement our task. But the fact that we are unable to do all that we might have wished to do is no reason why we should not do what we can; the fact that there are evils for which no suitable remedy has yet been found is no reason for delaying to apply to other evils such remedies as may appear to be suitable; to admit that the range of human prevision is limited is no unmanly confession of impotence; to acknowledge that the morrow will have its task is no ground for putting off the task of the day.

"What the Council have to consider as practical men is, not whether this is an ideally perfect measure, not whether it is a final settlement of questions between landlord and tenant in Bengal, not whether it is likely to usher in a millennium either for the zamíndár or for the raiyat, but whether it represents a step in advance, whether it does anything substantial towards removing admitted defects in the existing law, whether it does not give some substantial form of security to the tenant, some reasonable facilities to the landlord. It is because I believe that the measure, however it may fall short of ideal perfection, does embody substantial improvements in the existing law, that I commend it to the favourable consideration of the Council.

"One word in conclusion on the question which, though it is not technically raised by the present motion, has been appropriately discussed upon it—the question whether we should now proceed with the consideration of this measure or should defer its consideration until the expiration of a certain interval after the Bill has been re-published. The period of delay for which Bábú Peári Mohan Mukerji asks is a period of three months, but we all know that this practically means a delay of not less than a year, and therefore the question before the Council will be whether they will hang up the measure for another year, and thereby, amongst other things, condemn the officers of the Bengal Government and their own Committee to a re-commencement of what my friend the Lieutenant-Governor has properly described as their Sisyphean tasks; the former of piling up reports which are written in the summer, edited and annotated in the autumn, discussed in the winter, and shelved in the spring; the latter of renewing, under circumstances which involve a lamentable sacrifice of valuable time, discussions, the renewal of which is only rendered possible by the fact that the human memory is incapable of retaining, for more than a very limited time, the vast store of facts and arguments which have accumulated round this Bill.

"Now on what ground is this motion based? Is it on the ground that the public have not had sufficient time to consider the points of difference between the Bill which was published with the Preliminary Report, and the Bill which has now been laid on the table. My hon'ble friend Bábú Peári Mohan Mukerji has referred to the Resolution which was issued rather more than two years ago with reference to the desirability of giving greater publicity to legislative measures. That Resolution issued from my Department, and therefore I am in a special manner responsible for it. I concur entirely in every word that it contains, and I have done, and shall continue to do, all in my power to give effect to the principles on which it insists. If, therefore, the procedure which we now propose to adopt were in any manner inconsistent with that Resolution, I should be justly chargeable with inconsistency. But it is not inconsistent with that Resolution. The answer to the suggestion that no sufficient time has been given for the consideration of the Bill as now amended has been supplied by my hon'ble friend Sir Steuart Bayley, and it is this, that the alterations which have been made in the Bill since the date of its last publication are almost entirely in the nature of excision and reduction, and that we have not added any new matter of such importance as to require the opinion of the public upon it. Or is the motion before the Council based on

the wider ground that the information laid before the Select Committee is not sufficient to justify their recommending the adoption of any such proposals as those embodied in the Bill? On this point, again, I need only refer to what has been said by my hon'ble friend Sir Steuart Bayley as to the exceptionally searching and exhaustive nature of the inquiries and reports on which our conclusions are based, and express in the most emphatic manner my concurrence with his opinion that the constitution and procedure of the Select Committees of this Council are entirely unsuitable for that kind of examination of witnesses which has been suggested. That there are depths of this vast subject which we have not fathomed to the bottom, that there are tracts which we have left unexplored, nobody denies; what we do say is that the information before us was sufficient, and sufficiently tested, to enable us to come to certain definite conclusions on certain important points, and that it is upon those conclusions that our recommendations are based. My hon'ble friend the Mahárájá of Durbhunga claims the support of the majority of the Select Committee for the motion for delay, and says that the majority of them signed dissents from certain more or less important recommendations of the Report, and therefore must be taken to have dissented from the specific recommendation that the Bill be passed as now amended. The fallacy is obvious, and the accuracy of the assertion is easily put to the test. It will be tested shortly by the vote which is to be given on Bábú Peári Mohan Mukerji's motion. I am one of those members of the Select Committee whose signature to the Report is conspicuous by the absence of a decorating star, but on the question whether there should or should not be further delay in the prosecution of this measure I appeal with confidence to the majority of the Select Committee. To the unflagging assiduity with which the members of that Committee have devoted themselves to their arduous labours no one is more willing to testify and render grateful acknowledgment than their chairman. That they should respond with alacrity to an invitation to a renewal of their labours one could hardly expect, unless indeed they belong to that exceptional class of mortals whose conception of Heaven is that of a place where congregations ne'er break up, and the sittings of Select Committees never end. But in all seriousness I apprehend that their reply would be that the information laid before them, though not complete, was sufficient for the practical purposes they had in view; that further information would not be likely to bring more united counsels; that they had completed their task, whether well or ill, at all events to the best of their ability; and that another year's delay would not be likely either materially to enlarge their knowledge, or materially to modify their conclusions.

"As for those hon'ble members to whom the privilege or penance of sharing in the deliberations of the Committee has not been extended, and who must therefore content themselves with a broad and general view of the measure which is laid before them, I would ask them merely to consider whether the measure may not, in its present shape, be fairly regarded as a substantial and honest piece of work, and whether the advantages which might possibly arise from further enquiry and discussion are not far outweighed by the disadvantages necessarily incidental to the prolongation for an indefinite period of a state of uncertainty, tension and irritation which is in the highest degree prejudicial to the interests of landlord and tenant alike."

His Excellency THE PRESIDENT said:—"I do not think it necessary that I should trouble the Council with any observations of my own at this stage of our proceedings. I shall have ample opportunity, when we come to discuss the several points in this Bill with respect to which amendments are to be moved, of expressing my opinion in regard to them. I will therefore content myself by saying that, although it is likely that during the course of our deliberations this Bill will be considerably improved in many of its particulars, I have no hesitation whatever in giving to its general features my cordial and sincere support. I have convinced myself that it is, as my hon'ble colleague has just said, a very honest and conscientious piece of work. I am quite certain that those who have engaged in advancing it to its present stage have been actuated by the sole desire of doing equal justice to all those interests which are dealt with under the Bill. It cannot be seriously

urged that this Council has not a right to legislate in the direction proposed. It so happens that I became Under-Secretary of State for India while the legislation which resulted in Act X of 1859 was still under discussion, and I then came to the conclusion, which further examination has only confirmed, that it would be idle to contend that legislation of this description is any invasion whatever of the rights accorded to the zamíndárs under the Permanent Settlement. If I thought that any clause of the Bill interfered with rights which have been granted to any class of Her Majesty's subjects in India by the Imperial Government, I certainly would not be found among its supporters; but, on the contrary, I believe that this Bill is in perfect harmony with those principles which inspired the authors of the Permanent Settlement; and I am quite certain that hereafter, when the present controversies have subsided, even those who consider their interests most injuriously affected by what it is proposed to do will acknowledge that this legislation has benefitted the agricultural interests of the country. With regard to the special point which is before us, namely, whether or not the present Bill should be hung up for another year, I can only say that, in the presence of the all but unanimous opinion which has been delivered by my colleagues in favor of proceeding at once to the immediate consideration of the Bill as amended by the Select Committee, it would be impossible for me, even if I myself did not share that opinion, to undertake the responsibility of delaying a measure, the postponement of which, I am told by so many persons competent to speak with authority on the subject, would be so disastrous. In conclusion I may observe that I for one have listened with the greatest interest and pleasure to the discussion which has taken place. Although I have certainly done my best to acquaint myself with all the facts and arguments bearing on this question as far as they are contained in the voluminous literature connected with the subject, this is the first occasion on which I have had the advantage of hearing it discussed by persons so capable of handling it. I have been specially struck with the moderation, the ability, the temper and with the eloquence with which my several colleagues have placed us in possession of their respective views, and I may be permitted to add that the Native members of this Council were certainly not those who have shown the least ability in dealing with the question."

The motion was put and agreed to.

The Hon'ble BABU PEARI MOHAN MUKERJI moved that the Bill as amended by the Select Committee to which it was referred be re-published, and that the consideration of the measure by the Council be deferred for at least three months from the date of its re-publication.

He said the hon'ble members of the Council were already in possession of the reasons why he considered such a course desirable. If the opinion of hon'ble members was that the republication of the Bill at that stage was inexpedient, he would ask whether His Excellency the President could not see his way to put off the consideration of the amendments on the provisions of the Bill for two or three weeks, with a view to enable hon'ble members who were not members of the Select Committee to study the amended Bill, and to enable English-knowing landlords and tenants to give their opinions on the subject.

The Hon'ble Sir STEUART BAYLEY pointed out that the proposition of the hon'ble mover of the amendment simply amounted to this, that the postponement of the Bill for two or three weeks meant its postponement for one year. This, he presumed, was open to the same objection as the first amendment. As had also been pointed out by the Hon'ble Mr. Gibbon, any postponement of the measure would lead to the continuance of the agitation against the Bill. For these reasons he would ask the Council to reject the amendment.

The amendment was put and negatived.

The Council then adjourned to Wednesday, 4th March.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 13th March, 1885.

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FINANCIAL STATEMENT for 1885-86.

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APPENDIX I.

FINANCIAL STATEMENT for 1885-86.

Preliminary.

Preliminary.

1. The Financial Statement for the ensuing year will present but little of special attraction so far as any new development of our fiscal system is concerned. But on the other hand, to those who have followed with attention the course of Indian finance during the last few years, the year 1885-86 will prove of much interest. As being the fourth year in which a Budget has been framed on the basis of the anticipations embodied in the reforms which culminated in 1882-83, it enables us, when viewed with the three years preceding it, to judge what, in the presence of considerable difficulties and apart from extraordinary emergencies, the outcome of the measures taken in 1882-83 may, on the whole, be said to have been. In a later part of this Statement I shall have occasion to go at greater length into this subject; but this much may be said in these preliminary remarks, that, in my judgment, we now may assume that, very exceptional circumstances apart, the expectations of my predecessors, who believed that the normal and healthy increase of revenues would be found to balance the ordinary expenditure, and in that confidence abolished the import duties and lowered the salt tax, have been fulfilled. In the course of this Statement we shall find that the three years 1882-83, 1883-84, 1884-85, have between them, if we take in the case of the two former years the Accounts, and, in the latter year, the Revised Estimates, given us a surplus of revenue over expenditure of about £1,378,000; that although in any one year its surplus may be abnormally large, or in the succeeding year there may be even some apparent deficit, these are variations largely attributable to irregularities of Land Revenue collection incidental to our fiscal administration, which in no way necessarily indicate uncertainty or irregularity in our sources of receipt, when viewed as a whole; that we can sustain such severe losses as a partial failure of the opium crop, a temporary stagnation of the railway traffic, arising from dullness in our wheat trade, or a serious falling off in our Customs duties, or that we can provide for unforeseen expenditure, such as payments necessitated on an excessive opium crop may produce, but that these losses or requirements leave us, as they found us, with our resources unimpaired, and without any causes of anxiety as to our capability in the future of meeting similar emergent demands. This much will be seen on the brighter side of the subject. On the other, however, attention will be drawn to the consequences of depression in trade, and of a further depreciation in the value of silver. It will be noted that for the first time in our financial history we have been compelled to adopt a rate of exchange no higher than 1*s.* 7*d.*, and if we have not had to add to our estimates the corresponding sum of £440,000 as a gross increase to our loss by exchange, it is only because there will be, for reasons to be presently explained, a very considerable decrease this year in the Secretary of State's Bills, which enables us to shew in 1885-86 an apparent economy under the head of exchange; an economy, however, which must not be taken as indicating any real corresponding improvement. As far as the future is concerned, little or no ground will be found to exist for allaying our apprehensions: and this at a time when we have embarked upon extensive and costly measures for the improvement and development of our communications, and when the course of events beyond our frontiers is raising questions which seem likely

Sufficiency of revenues provided by the reforms of 1882-83 and preceding years: effect of recent circumstances on those reforms.

to disturb, more or less seriously, the calculations of those who are charged with the financial administration of this country. While, therefore, it will probably be conceded that the measures of reform which I have alluded to have been fully justified by the experience acquired since their introduction, it will possibly be questioned whether the *status* which they established will prove sufficient in view of the further trials which seem to be awaiting us, and of the necessities of our situation, whether connected with the state of our currency, or with the measures necessary for the development and protection of the country. The experience which we shall gain during the ensuing year as to the effect upon our estimates of the several considerations I have indicated will, probably, be invaluable in adding to the means at our disposal for forming a final opinion upon this point; a point which obviously depends, not in the least on the adequacy or otherwise of the financial resources provided us in their relation to the state of affairs which existed at the commencement of the decade, but on the consideration whether affairs are not passing into a new phase which was then, though not unforeseen, less imminent; which could not therefore be taken into immediate consideration; but which, should it now arrive, must be met on the lines of the policy then adopted, and in conformity with the principles by which it was inspired. I hope, in the course of this Statement, so to handle the material before me as to illustrate and to demonstrate the appositeness of the preceding remarks, and to make clear to any one who reads it with moderate attention, what our resources during the three years which it treats of have been, or are likely to be; how far they are capable of meeting the calls which in ordinary course experience shews we must expect; and whether, in view of the further obligations we have undertaken, or which the fall in silver or other circumstances are forcing upon us, our resources may be expected to prove as sufficient in the years immediately ensuing, as in the three years which it will be the business of this Statement to review.

The Accounts of 1883-84.

	£
Revenue	71,727,421
Expenditure	70,339,925
Surplus	1,387,496

2 The appropriation audit report, published in the *Gazette of India* of 14th March 1885, gives in great detail the explanations necessary to arrive at a full understanding of the surplus here exhibited; but as the surplus of the Budget Estimate for that year was taken at £457,000 and that of the Revised Estimate at £271,400 only, it is desirable to add a few remarks explanatory of the great difference between the actual surplus and the several forecasts above enumerated. There was an increase of £1,595,300 under the principal heads of revenue, of which the main item was Land Revenue, about £569,200. This sum was collected in Burmah, Madras, and Bombay in 1883-84, greatly in advance even of the estimates of January and February 1884, at the end of the year, and in ordinary course would have fallen into 1884-85, (an incident, as will be presently seen, which, however favourable to the surplus of 1883-84, has mainly contributed to bring about a deficit in the Revised Estimates of 1884-85). The Opium revenue was £356,500 better than the estimate, and owing to the very short crop of the year, there was a decrease of £310,600 on Expenditure. Excise, Stamps, and Forest revenue, between them, were better by £439,000 than the estimates. Post Office, Telegraph, and Mint gave an improvement of £58,500 owing to short expenditure on capital account of telegraphs, and the absorp-

Large exhibited surplus partly due to collection of land revenue ordinarily falling due in 1883-84; partly to method of accounting for certain sums connected with the Sindh, Panjab, and Delhi Railway

tion of copper coin bringing a large gain to the Treasury. Under Miscellaneous an arrear of £130,000 was paid on account of interest from the Bombay Port Trust. Productive Public Works shewed a better revenue account by £687,400, due to the prosperous trade of the year, which, however favourable circumstances may have been, it would have been obviously imprudent fully to take credit for in the estimates. Under Public Works not classed as Productive there was a gain of £362,500, arising from the transfer of certain Provincial Railways in Bengal and in the North-Western Provinces from Ordinary to Productive, and the per contra transfer of Madras Harbour Works from Productive to Ordinary. The sum of £325,000, which in the Revised Estimates, as explained in my Budget Statement for last year, was written off against revenue by a credit to capital, being the loss in past years on the Indus Flotilla of the Sindh, Punjab, and Delhi Railway, and which balanced the gain above mentioned, has been since removed from the Revenue Account under instructions from the Secretary of State, thereby relieving the estimates of 1883-84 of that charge. Under Military Estimates there was a saving of £178,600; but, as a million sterling was paid to the English War Office on account of arrears of non-effective charges, the real saving was converted into an excess charge of £821,400, while the exchange rose to £290,700 above the estimates, as the Secretary of State took the occasion of a favourable market to increase the number of bills drawn by him. These explanations cover, generally, the increase of the surplus shewn in the Accounts over that exhibited in the Budget and the Revised Estimates. The difference between the Budget Estimate and the Accounts requires perhaps less explanation; but if it is asked why the Revised Estimates, made at a date comparatively late, and but shortly before the close of the year, were so wide of the mark, the answer is to be found in the accelerated payment of £569,200 Land Revenue above mentioned, and in the orders of the Secretary of State under which, after the close of 1884-85, £325,000 on account of the Indus Flotilla were removed from the debit to Revenue.

Revised Estimates, 1884-85.

3. The Budget and Revised Estimates for 1884-85 are as follows :—

Budget Estimates.

	£
Total Revenue	70,560,400
Total Expenditure	70,241,100
Surplus	319,300

Revised Estimates.

Budget and Revised Estimates, 1884-85 :

	£
Total Revenue	69,991,200
Total Expenditure	70,707,400
Deficit	716,200

4. The past year, so far as can be seen on the Revised Estimates and until its accounts are finally closed, has presented us, not with the surplus of £319,300, but with a deficit of £716,200. *Deficit of.*

5. It has been already mentioned that the unexpected payment in March 1884 of Land Revenue amounting to £569,200 swelled the surplus of 1883-84 to the prejudice of the ensuing year, and that the calculations on which the estimates of 1884-85 were framed have been thrown out to this extent; an extent, approximating to the deficit on the Revised Estimates of that year. *Effect of inclusion in 1883-84 of sums ordinarily payable in 1884-85.*

Before the year closes considerable further expenditure will have to be incurred on account of the proposed Camp to be formed at Rawal Pindi for the reception of the Amir of Kabul; and we have provided for this in our Revised Estimates.

Exceptional difficulties in 1884-85.

6. Apart from this, however, to those who have watched the course of trade during the past year, it will be matter of little surprise that the small surplus of the Budget was not realised. There have been several causes contributant towards this result. They may be grouped under the two main heads of "Trade" and "Revenue and Expenditure." Under the first fall the exports of wheat, and consequently the railway earnings; and the exports of rice, and consequently the Customs duties. Under the latter fall Land Revenue and Opium. The combination of a good harvest in England, and of large stocks in America, depressed the price of wheat during the later part of the year 1884; and early in the second half of the calender year it became obvious that the export trade in wheat, which during the last two years had been continually increasing, must suffer a temporary re-action. The rice trade had begun to shew signs of depression since the commencement of 1884, and never recovered itself during the financial year. I have given, in a later part of this Statement, figures indicating the comparative fall in prices and in the export of wheat and rice, but at present I confine myself to dealing with the financial results which have been brought about by these causes. They may be briefly summed up as follows in a comparative form :—

I.—Customs.

	£
Budget Estimate	1,289,500
Revised Estimate	1,030,000
Less	259,500

II.—Productive Railways.

Financial effects of the loss in Customs and Railway Revenues.

	Budget Estimate, 1884-85.	Revised Estimate, 1884-85.	Budget Estimate, 1885-86.
State Railways.	£	£	£
Net Revenue	1,454,200	1,383,300	1,571,200
Interest	1,425,500	1,409,400	1,515,300
Net Gain	28,700	—26,100	55,900
East Indian Railway.			
Net Revenue less Surplus Profits	2,797,700	2,378,900	2,723,700
Interest and Annuity	1,718,100	1,716,800	1,729,200
Net Gain	1,079,600	662,100	994,500
Eastern Bengal Railway.			
Net Revenue	230,000	260,000	317,500
Interest and Annuity	101,800	99,700	234,300
Net Gain	128,200	160,300	83,200
Guaranteed Railways.			
Net Revenue	3,613,000	3,374,000	3,360,000
Interest and Profits	3,770,260	3,717,500	3,725,400
Net Loss	157,260	343,500	365,400
Net Gain to State	1,079,240	452,800	768,200

7. We have here a total decrease in the Revised, as compared with the Budget Estimate, of £885,949. This loss is wholly derived from the depression

in trade, which could not be foreseen at the time of the Budget. The East Indian Railway gross earnings were £580,000 short of the Budget; those of the Rajputana-Malwa State Railway, £47,500; of the guaranteed lines the Oudh and Rohilkhand Railway Revised Estimate of net receipts is £175,000, against a Budget Estimate of £250,000; the Sindh, Punjab, and Delhi gives £390,000 Revised Estimate, against an estimate on the Budget of £480,000. To the direct losses on the State Railways must be added a temporary decrease in Land Revenue in Madras and in Bombay, brought about by suspension of revenue in certain districts of those Provinces, owing to partial failure of the rains in 1884. These sums are severally estimated at £271,600 for Madras, and £72,300 for Bombay. Credit has been taken for them in 1885-86; but as, on the one hand, the year 1884-85 was mulcted of about £569,200, by which, as above explained, the year antecedent benefited, so, on the other, it has been obliged to resign to the succeeding year, 1885-86, the above amount of £343,900, which ordinarily would have been collected within its term, and placed to the credit of its receipts. Finally, we were called upon to meet the largest expenditure on account of payment for opium which has ever, so far as I know, been incurred in India. The outturn of the crop was large beyond all experience, and we found ourselves compelled to add, in the course of the year, no less than £593,600 to our Budget Estimate on this account. Although, eventually, by the great increase to our opium reserves, which threatened in the commencement of 1884-85 to fall abnormally low, we shall benefit by this extraordinary stock, the benefit will be for future years; the burden is thrown on 1884-85. Adding together the several losses under the several heads above enumerated of Customs, Railways, Land Revenue, and opium, we have a total of £1,823,440. To this, again, must be added the sum of £118,500 which we contributed from revenue towards capital expenditure on account of the construction of the Sindh-Pishin-Sibi Railway. I shall have more to say presently regarding the assignment of grants from revenue for capital expenditure on railways; but I draw attention to this grant here, because the active resumption of work on that Railway had not been proposed, and could not be foreseen at the time the estimates of 1884-85 were framed. If it is permissible in any way to congratulate oneself over the figures of a deficit, we have ground for satisfaction that in spite of these abnormal losses and charges the constant and steady increase in other branches of our revenue has enabled us to compensate in large measure for the disagreeable results which awaited us on the estimates made under the several heads I have specified. Taking, moreover, the years 1883-84 and 1884-85 together, we find, as explained in my 2nd paragraph, that, whatever the one year may have gained at the expense of the other, the revenues proper to either, looked at as a whole, suffice to meet the expenditure. The results of the financial administration have continued, in effect, to justify the conclusions indicated in the opening sentences of my Financial Statement for 1884-85. I have to return to this matter; but enough has been stated already, I think, to make it obvious that, unforeseen difficulties notwithstanding, the normal receipts have been equal to the normal expenditure. Presently, when I take up in detail the results under the minor heads of the estimates, it will be seen where normal growth of revenue has assisted us in meeting abnormal losses, and I reserve any further remarks I have to make on the subject, until I come to deal with those figures. It need only be added here, in general terms, that, on the whole, the season having been a good one, the increase in our Salt, Stamp, and Excise revenues has continued to give the results anticipated; State Railways have done well; there have been considerable economies under "Army" and other heads. On the other hand, it should not escape notice that exchange, which we had taken at £3,538,100, is shewn in the Revised Estimates at £3,253,900, or £285,200 less than

Further effects of suspensions of Land Revenue, and abnormal Opium expenditure.

Compensating effects of increase of revenue under other heads.

Secretary of State's drawings exceptionally small in 1884-85.

the estimated figure. The Secretary of State was enabled to supplement his bills by drawing on resources at his disposal in England. In judging not merely of the budgetary surplus or deficit of any particular year, but of the aspect, in a larger view, of our financial condition during the past year, of the claims which we have to meet, and of the resources which are at our disposal, this fact must be borne in mind; especially at a time when, as we shall presently see, the exchange is assuming proportions which threaten to interfere seriously with the arrangements by which we had secured our equilibrium.

Course of trade during 1884-85.

8. Passing from the financial effect of the depression in the wheat and rice trade, and the excessive expenditure in opium, I think it is desirable to gather together here the main figures which illustrate the course of trade during the year, and its present prospects, as well as those indicating the large increase in our opium stores and the cost at which it has been acquired.

Growing importance to India, from a financial point of view, of its trade viewed in connection with its railway receipts. Some analysis of its trade returns necessarily forms part of this Financial Statement.

9. With the growth of its railway enterprise the Government of India is becoming more and more deeply interested in the progress of Indian trade, and it is not without good reason that the departments of Commerce and of Finance have been linked together in Indian administration. So large a proportion of our revenue is derived from railways, and if the estimates and forecasts which have been framed for the future should be verified, so large an increase from the same source may in the course of time be looked for, while, on the other hand, our obligations in regard to the cost of construction are assuming such grave proportions, that the direct interest of this Government in the development of its export trade, from the point of view of the resources which it derives immediately therefrom, is, to say the least of it, no less than that which it has in the other main branches of its revenue. For this, if for no other reason, some analysis of the returns of trade during the preceding year seems necessarily to form part of a Financial Statement, indicating as they do not only the causes which may have led to any increase or falling off in the estimates of that year, but assisting us in forming a forecast as to what are the probabilities of the year about to ensue. I have given above a résumé of the financial effect produced by the stagnation in trade under which we are now suffering; and the figures which I am about to tabulate, and for which I am indebted to Mr. O'Conor, the Assistant Secretary in the Department of Commerce, whose excellent reports on Indian trade place annually before the public in the clearest form all possible information on the subject, will show how those effects have been brought about; and, I am afraid, will yield for the moment but little ground for hoping that we may expect any speedy return of the period of prosperity with which we were favoured in the years 1882 and 1883, and more especially in the latter year. The annexed table shows for the years 1882-83, 1883-84, and ten months of 1884-85 the quantity and value of exports of some of the principal articles of Indian merchandise.

Comparative annual tables of exports, 1882-83, 1883-84, ten months, 1884-85.

Exports of certain Indian Products by sea to other countries for the years 1882-83 and 1883-84 and for the ten months (April to January) of 1884-85.

Articles.		1882-83.		1883-84.		1884-85 (Ten months).	
		Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
			£		£		£
Cotton, Raw	Cwt.	6,168,278	16,04,90,174	5,079,494	14,38,37,278	4,112,165	10,81,31,383
Tea	lbs.	57,766,225	3,69,94,965	59,911,703	4,08,38,805	58,361,667	3,69,98,351
Hides and Skins	Cwt.	866,164	4,44,37,703	915,450	4,66,37,363	774,187	3,82,73,292
Jute, Raw	,,	10,348,909	5,84,69,259	7,017,985	4,59,26,353	7,070,275	3,97,67,110
Jute, manufactured (gunny bags)	No.	60,737,651	1,43,15,841	63,645,084	1,25,62,589	77,475,612	1,31,80,225
Seeds	Cwt.	13,139,266	7,20,03,365	17,355,588	10,08,37,583	15,196,009	8,88,32,424
Rice	,,	31,258,288	8,47,63,272	27,039,859	8,36,20,798	12,883,218	4,48,00,144
Wheat	,,	14,144,407	6,08,89,341	20,956,495	8,87,75,610	13,109,578	5,27,24,349
Sugar	,,	1,318,698	80,87,759	1,639,520	94,32,185	1,051,236	53,14,120

10. A second table shows, for these articles, a comparative quarterly return for so much of the same years as admits of quarterly comparison.

Exports of certain Indian Products by sea to other countries for the first three quarters of 1882-83, 1883-84, 1884-85.

Comparative quarterly returns for the first three quarters of the above years.

Articles.	Official years.	Quantity. 1st quarter.	2nd quarter.	3rd quarter.	Total of the three quarters.	Value in Rupees. 1st quarter.	2nd quarter.	3rd quarter.	Total of the three quarters.
Cotton, raw . Cwt.	1882-83	2,806,584	742,869	612,351	4,161,804	7,60,41,663	1,91,19,427	1,52,57,506	11,04,18,596
	1883-84	2,581,983	589,43	833,898	4,005,312	6,37,09,292	1,33,37,965	1,92,73,030	9,63,20,287
	1884-85	2,734,309	602,245	481,305	3,818,059	7,42,05,478	1,48,51,589	1,18,41,493	10,08,98,560
Tea . . . lbs.	1882-83	2,688,307	21,199,570	21,962,774	45,850,651	17,83,207	1,39,34,783	1,38,58,176	2,95,76,166
	1883-84	3,378,351	22,798,175	22,829,819	49,006,345	22,86,272	1,58,91,247	1,52,45,285	3,34,22,804
	1884-85	2,647,498	23,964,781	26,019,701	52,631,980	16,87,561	1,56,43,340	1,61,44,825	3,34,75,726
Hides and skins Cwt.	1882-83	200,900	199,486	212,027	612,413	1,01,66,096	1,01,04,155	1,08,85,657	3,11,55,908
	1883-84	249,727	187,618	191,036	628,381	1,23,84,266	1,03,99,213	99,03,309	3,26,86,788
	1884-85	225,751	202,922	231,763	660,436	1,10,24,699	1,06,73,211	1,13,36,346	3,30,14,256
Jute, raw . ,,	1882-83	1,048,884	1,678,649	4,167,676	6,895,209	59,69,645	99,01,146	2,35,88,059	3,94,58,850
	1883-84	1,642,411	860,630	2,589,591	5,092,632	89,45,794	47,98,724	1,81,12,547	3,18,57,065
	1884-85	637,797	1,031,415	4,638,248	6,307,460	42,99,126	58,59,194	2,52,87,318	3,54,45,638
,, manufactured (gunny bags) . No.	1882-83	12,283,744	13,217,704	15,253,697	40,755,145	28,41,434	35,95,355	38,73,711	1,03,10,500
	1883-84	13,061,938	10,187,474	22,614,313	45,863,725	24,52,553	25,13,939	39,63,053	89,29,545
	1884-85	17,288,363	19,181,128	25,530,756	62,000,247	31,66,313	37,92,344	42,29,309	1,11,87,966
Seeds . . Cwt.	1882-83	3,873,291	3,280,348	3,258,663	10,412,302	2,08,32,706	1,73,66,706	1,79,96,380	5,61,95,792
	1883-84	6,325,951	4,556,066	2,812,783	13,694,800	3,61,63,096	2,57,50,678	1,64,89,741	7,84,03,515
	1884-85	6,535,685	4,232,682	3,249,654	14,018,021	3,73,30,796	2,41,31,007	1,97,62,893	8,12,24,696
Rice . . ,,	1882-83	9,344,285	4,827,982	3,472,567	17,644,834	2,40,05,294	1,33,31,194	1,01,63,458	4,74,99,946
	1883-84	8,549,537	3,713,440	3,158,232	15,421,209	2,45,28,242	1,16,90,349	99,18,329	4,61,36,920
	1884-85	6,192,477	2,823,250	2,381,224	11,396,951	2,02,34,932	1,01,76,409	88,46,075	3,92,57,416
Wheat . . ,,	1882-83	4,263,170	2,651,270	3,922,265	10,836,705	1,84,65,361	1,13,89,086	1,68,61,418	4,67,15,865
	1883-84	7,682,417	7,952,414	3,285,953	18,920,784	3,23,39,202	3,33,76,020	1,40,77,661	7,98,12,883
	1884-85	3,912,386	5,000,052	3,052,998	11,965,436	1,57,69,368	2,03,95,026	1,23,09,457	4,84,73,851
Sugar . . ,,	1882-83	724,480	300,952	100,082	1,125,514	46,59,513	17,62,702	6,83,816	71,06,031
	1883-84	1,092,246	335,392	117,641	1,545,279	61,43,516	20,07,864	6,77,531	88,28,911
	1884-85	627,492	380,425	39,025	1,046,942	30,84,471	19,55,585	2,35,095	52,75,151

Decline of trade indicated in above tables.

11. It will be seen that while in tea, hides, skins, jute goods (bags), and seeds, there has been improvement, on the other hand, in most of our important exports, in raw cotton, rice, wheat, sugar, raw jute, the decrease has been steady and serious, and the decline has, in most cases, been coincident with the marked decline in prices in the English markets which commenced in the third quarter of 1884. Prices, indeed, for most of our large staples commenced to shew symptoms of decline from the beginning of 1882, but the decline was interrupted from time to time by temporary upward movements, which gave an immediate impetus to trade, and it is only since the middle of last year that the downward movement has been accelerated, and has continued without interruption to the present time. There seems some indication, however, that the decline in prices has reached its lowest limit. There are some grounds for hoping that for many of the articles enumerated in these tables prices will presently reach a level which may favour a more active resumption of trade. It will be seen that in the several quarters of which a comparative table is given, tea has risen in quantity and in value from 45,850,651lbs., of the value of ₹2,95,76,166, to 52,631,980lbs., of the value of ₹3,34,75,726; hides and skins

from 612,413 cwt. to 660,436 cwt., and from ₹3,11,55,908 to ₹3,30,14,256; raw jute has fallen from 6,895,209 cwt. to 6,307,460 cwt., and from ₹3,94,58,850 to ₹3,54,45,638; jute bags have risen from ₹1,03,10,500, through a year of great depression, to ₹1,11,87,966; seeds from 10,412,302 cwt. to 14,018,021 cwt., and from ₹5,61,95,792 to ₹8,12,24,696; while raw cotton has fallen from 4,161,804 cwt. to 3,818,059 cwt., and from ₹11,04,18,596 to ₹10,08,98,560; and rice has fallen from 17,644,834 cwt. to 11,396,951 cwt. and from ₹4,74,99,946 to ₹3,92,57,416; wheat has risen, though in contrast with the trade of 1883-84 the rise indicates anything but prosperity, from 10,856,705 cwt. to 11,965,436 cwt. and from ₹4,67,15,865 to ₹4,84,73,851; sugar, finally, has fallen from 1,125,514 cwt. to 1,046,942 cwt. and from ₹71,06,031 to ₹52,75,151.

Wheat, sugar, jute, indigo.

Since January there has been some revival in wheat; but supplies are still large, and so long as the prospects of further supplies are fair, it would be, to say the least, sanguine to hope that trade will resume its former activity. At the present price in Calcutta, R2-6-6 per maund, with a freight of 35*s.* a ton through the Canal, wheat can be landed in England at about 34*s.* per quarter, exchange being taken at 1*s.* 7*d.* London prices for Indian wheat are about 35*s.* per quarter. But as exports increase freight advances, and prices in England have a tendency to fall; so that although, in fact, a difference of a farthing in exchange makes a difference of a little over 1 per cent. in the prices laid down, these other elements have always to be taken into consideration. The fall in the price of sugar has been due to the enormous extension of the beet crops in Germany and in Austria, caused by the protective laws enforced in those countries; prices have been gradually declining for some considerable time, but the fall was very rapid after the middle of 1884. Exports from Bengal, which had been increasing largely, fell almost to nothing, and large consignments of cane sugar came to the Province from Java, while even some beet sugar was imported. The fact of imports of sugar into Bengal from Java, Austria, and the United Kingdom, illustrates the condition of our sugar market. Jute has reached the lowest price touched during the period for which the tables have been made out. With the diminution in the wheat and rice trade there is a diminished demand for local manufacture, and a larger surplus of jute to export. The great decline in price commenced in the middle of 1884 and has continued steadily down to the present. Jute goods have fallen in value with a diminished local demand for them and surplus stocks remaining over from the heavy outturn of the mills in 1883 have been exported in greatly increased quantities for speculative markets. The price of gunny bags is regulated by the general condition of trade, especially of the grain trade, and these will not give better values until other articles revive. The price of indigo depends mainly upon the quantity and quality of the crop in Bengal and the North-Western Provinces, and fluctuates from year to year with little reference to other considerations; hence indigo has been omitted from these tables.

Comparative table of prices of wheat, rates of exchange on Secretary of State's Bills, and Canal freights from Calcutta.

From the subjoined table of prices will be gathered the great fall in present prices, as compared with 1882, in wheat. The rates of exchange and the freights ruling in the several months specified are added; and viewed in conjunction with the increasing stagnation of trade during that period, they throw some light on the contention of which a good deal has been lately heard that a fall in exchange, inasmuch as it stimulates trade, is in itself a source of increased revenue to the Government of India. It may be, no doubt, in favourable markets, but it certainly does not of itself suffice to sustain trade as against the competition of crowded markets, and in the presence of low prices. Comparing the exchange ruling in 1884 with that of 1883, when the trade was in its greatest activity, we find that for the first 8 months of the former year, when the

decline in exports first made itself felt, exchange was decidedly more favourable. It is, to say the least, very questionable whether, other things remaining equal, for the £440,000 which the loss of ⅛*d.* in exchange will cost us, we shall derive at present any adequate return in the stimulus of increased exports, and the revival of more active railway traffic.

	Gazette average prices of wheat in London.	Rates of exchange on Secretary of State's Bills.	Freights from Calcutta (*vid* Canal) for wheat per ton.
	Per Qr.		
1882.	*s.* *d.*	*s.* *d.*	£ *s.* *d.* to £ *s.* *d.*
January	44 9	1 8·01	2 10 0 to 2 12 6
February	46 1	1 8·05	2 2 6 to 2 5 0
March	44 9	1 8·07	2 7 6 to 2 10 0
April	45 1	1 8·15	2 12 6 to 2 15 0
May	47 2	1 8·07	2 6 3 to 2 7 6
June	47 7	1 8·02	2 0 0 to 2 2 6
July	46 11	1 7·91	2 5 0 to 2 7 6
August	51 3	1 8·01	2 0 0 to 2 1 3
September	47 3	1 8·00	1 17 6 to 2 0 0
October	39 6	1 7·87	1 10 0 to 1 12 6
November	40 11	1 7·63	1 10 0 to 1 12 6
December	41 5	1 7·14	2 0 0 to 2 2 6
1883.			
January	40 11	1 7·26	2 5 0 to 2 7 6
February	40 4	1 7·43	2 7 6 to 2 10 0
March	41 9	1 7·57	2 8 9 to 2 12 6
April	42 0	1 7·45	2 7 6 to 2 10 0
May	42 10	1 7·38	1 17 6 to 2 0 0
June	43 5	1 7·42	1 15 0 to 1 17 6
July	42 3	1 7·44	1 13 9 to 1 15 0
August	43 3	1 7·48	1 17 6 to 2 0 0
September	43 2	1 7·56	1 10 0 to 1 12 6
October	40 2	1 7·61	1 11 3 to 1 12 6
November	40 3	1 7·48	1 10 0 to 1 11 3
December	40 0	1 7·51	1 5 0 to 1 6 3
1884.			
January	39 0	1 7·59	1 0 0 to 1 2 6
February	37 9	1 7·76	1 0 0 to 1 2 6
March	37 3	1 7·66	1 3 9 to 1 5 0
April	37 7	1 7·78	1 5 0 ...
May	37 4	1 7·85	1 6 3 to 1 7 6
June	37 0	1 7·66	1 7 6 ...
July	37 4	1 7·54	1 10 0 .
August	37 6	1 7·52	1 5 0 ...
September	34 3	1 7·50	1 0 0 to 1 2 6
October	32 4	1 7·40	0 17 6 to 1 0 0
November	32 0	1 7·12	0 17 6 to 1 0 0
December	30 10	1 7·04	1 10 0 ...
1885.			
January	31 5	1 7·08	1 10 0 to 1 12 6
Difference per cent. in each year as compared with January 1882—			
1883	—8·57		
1884	—12·85		
1885	—29·80		

12. The following table shews the imports of wheat and wheat-meal and flour into England for the last three calendar years :—

Quantity of Wheat and Wheat-meal and Flour imported into England from Foreign countries in the calendar years 1882, 1883, and 1884.

Comparative table of imports of wheat, wheat-meal, and flour into England during 1882, 1883, 1884.

	Wheat. Quantity.			Wheat-meal and Flour. Quantity.			Total. Quantity.		
	1882.	1883.	1884.	1882.	1883.	1884.	1882.	1883.	1884.
	Cwt.	Cwt.	Cwt.	Cwt.	Cwt.	Cwt.	cwt.	Cwt.	Cwt.
Russia	9,571,021	13,293,358	5,401,964	...	...	...	9,571,02	13,293,358	5,401,964
Germany	3,083,921	2,871,095	1,090,368	1,990,403	1,928,769	1,746,514	5,074,324	4,799,864	2,836,882
France	7,379	9,498	19,023	220,269	163,898	154,349	227,648	173,396	173,372
Austrian Territories	...	...	...	1,559,621	1,736,900	1,562,379	1,559,621	1,736,900	1,562,379
Turkey	526,439	1,128,074	503,926	...	...	...	526,439	1,128,074	503,926
Roumania	194,591	403,937	687	...	...	...	194,591	403,937	687
Egypt	174,862	1,174,391	999,578	...	...	...	174,86.	1,174,391	999,578
United States :—									
On the Atlantic	20,347,230	14,250,195	14,321,320	7,777,362	11,270,918	10,340,567	42,836,885	37,336,750	32,946,697
On the Pacific	14,712,393	11,806,637	8,284,810						
Chili	1,656,361	2,310,126	1,055,964	...	...	...	1,656,361	2,310,126	1,055,964
British East Indies	8,477,479	11,243,497	8,009,909	...	...	...	8,477,479	11,243,497	8,009,909
Australasia	2,475,127	2,691,614	4,897,766	...	...	...	2,475,127	2,691,614	4,897,766
British North America	2,684,828	1,798,056	1,757,406	339,305	469,460	688,925	3,024,133	2,267,516	2,446,331
Other Countries	259,991	1,090,966	771,277	...	...	...	259,991	1,090,966	771,277
Ditto	...	...	...	1,141,845	723,584	610,784	1,141,845	723,584	610,784
Total	64,171,622	64,080,444	47,113,998	13,028,705	16,293,520	15,103,518	77,200,327	80,373,973	62,217,516

Great as the falling off has been, the Indian imports into England amounted to 12·8 per cent. of the whole quantity imported, against 10·9 per cent. in 1882 and 13·9 in 1883. Compared with the Russian trade of last year, the Indian imports contrast favourably.

13. The prospects of the rice trade continue to be doubtful; the stocks on hand in London were estimated (*Economist* of January 3, 1885) in the five years closing with 1884 as follows :—

Rice trade; stocks in hand.

	Tons.
December 1880	29,730
,, 1881	52,800
,, 1882	24,840
,, 1883	54,900
,, 1884	33,900

Prices of Rice in Europe; competition of Saigon; comparative figures of Saigon exports to Europe.

14. Prices have continuously fallen, and were very lately lower than at any former period, prices for Rangoon rice to arrive being quoted in London on February 7 :—

		s.	d.		s.	d.
1882	per cwt.	8	9	to	9	1½
1883	,,	7	9	to	8	3
1884	,,	7	3	to	7	9
1885	,,	7	3	to	7	4½

The effect on rice of the excessively low price of maize, potatoes, and sugar, has been aggravated by the relations at present existing between the Governments of France and of China. Saigon rice, instead of looking for its

market in China, is now diverted to Europe, and the following table shews the increase of exports of Saigon rice to Europe during the last two years. The figures are taken from returns furnished by Her Majesty's Consul at Saigon :—

	1882-83.	1883-84.	1884-85.
	cwt.	cwt.	cwt.
1st Quarter	2,628,900	3,299,100	3,414,520
2nd ,, ...	1,405,560	2,095,600	2,579,280
3rd ,, ...	1,965,740	(Not received)	837,140
4th ,, ...	2,832,760	3,344,400	...

Competition of Siam and Japan. Prospects of improvement in rice trade.

15. Siam and Japan are also entering the European market and exporting increasing quantities of rice. The temporary depression of the Burmah rice trade is due, unquestionably, however, not to competition, partial failure of corps, or low prices in Europe only, but in a great measure to over-speculation and excessive competition in 1883-84. With a revival of trade in Europe, and with a more sound and less speculative conduct of trade operations, we may hope for material improvement in the rice trade, which, for the moment, however, continues in a state of depression only too faithfully reflected in our returns of Customs duties.

16. Turning from the interest which the Government of India in its capacity of an extensive owner of railways, or as the guarantor of the main Indian lines, is compelled in an extraordinary degree to feel in the development of the trade of the country, I proceed to give a view of another of those relations which, as I pointed out in paragraph 120 of my last year's Statement, it occupies outside the sphere of the ordinary operations of Governments. The following few facts shew how it was that we were called upon to meet the heavy excess expenditure, the figures of which have been given in my paragraph 7 in relation to our opium monopoly. The area under opium in 1883-84 was not, I believe, exceptionally large, but from causes connected with the atmospheric peculiarities of the season, the outturn was quite exceptional. The average yield per beegah in the Behar Agency was 5 seers 15½ chittacks, against 2 seers 12 chittacks in the preceding year, which, however, was a year exceptionally bad, while in the Benares Agency it was 6 seers 7½ chittacks against 4 seers 1½ chittacks. The last estimate of the Behar Agency produce was 47,766 maunds, the gross weight of opium received, at 80-tola weight, was 55,379 maunds. In the Benares Agency, from figures furnished by the Opium Agent, it would seem that the outturn compared with that of the preceding ten years, was as follows :—

Opium crop of 1883-84. Comparison of outturn with that of previous years.

	Maunds.
1873-74	43,000
1874-75	39,201
1875-76	60,113
1876-77	61,561
1877-78	45,380
1878-79	50,636
1879-80	45,475
1880-81	45,505
1881-82	51,449
1882-83	42,213
1883-84	67,037

We had estimated, on account of Opium expenditure, for a sum of £2,352,900, we actually have had to pay a sum of £2,946,500. The storing of this largely increased quantity of opium led to no little difficulty in the Benares Agency,

and after the closing of the season's factory weighments, additional accommodation had to be furnished. The result, however prejudicial to our estimates of 1884-85, will enable us materially to increase our opium reserve. The prospects of the season now drawing to a close are again reported good, but there is no reason to suppose that the return will be equal to that of the preceding year.

Salt: progressive consumption steady but moderate.

17. In paragraph 16 of last year's Financial Statement is given a comparative table of the consumption of salt for the 11 corresponding months of each year from 1874-75 as compared with the previous year, and it was shewn that in the 11 months from 1st March 1882 to 31st January 1883, and from the 1st March 1883 to 31st January 1884 the increased consumption as compared with the corresponding months of 1881-82 amounted to 2,576,000 maunds. The consumption for the corresponding months of last year, namely, from 1st March 1884 to 31st January 1885 is 27 792,000 maunds, or 718,000 maunds in excess of the corresponding period of the preceding year. We have taken for our estimates a figure £72,000 in excess of the Budget Estimate of last year, and £61,700 in excess of the Revised Estimates. The increase of consumption continues to be steady, but not excessively large.

Savings Banks: increase in Depositors.

18. On the 31st March 1884 the number of depositors in District and Presidency Savings Banks was 91,981 against 88,836 on the same date of the previous year, or shewing an increase of 3,145 depositors. The increase occurred among the natives:—

	Europeans and Eurasians.	Natives.	Total
	No.	No.	No.
31st March 1883 . . .	20,232	68,604	88,836
„ *1884* . . .	20,037	71,944	91,981
	— 195	+ 3,340	+ 3,145

These figures indicate a growth of the provident habits of the people of this country.

The balance at the credit of the depositors on the 31st March 1884 was £3,028,200 against £3,113,700 on the corresponding date of the previous year, or shewing a decrease of £85,500. This decrease is due, no doubt, to the opening of the Post Office Savings Banks.

Success of Post Office Savings Banks.

19. The Post Office Savings Bank system continues to be a marked success. At the end of March 1883 the total number of Savings Bank Accounts was 39,121, by the end of March 1884 it had risen to 84,848, and now at the close of January 1885 it stands at 116,528. The balance at the credit of depositors at the end of March 1883 was ₹27,96,796; by the end of March 1884 it had risen to ₹75,14,454, and now, at the end of January 1885, it stands at ₹1,26,10,610. Of the 84,848 accounts open at the end of March 1884, 8,410 were accounts in the names of Europeans and Eurasians, while 76,438 were accounts in the names of natives of India. Of the total number of accounts open at the end of January 1885, 12,617 stand in the names of Europeans and Eurasians, and 1,03,911 in the names of natives of India.

Post Office Savings Banks (within the limits of the Presidency towns) were opened at Madras on 1st April 1883, and at Calcutta and Bombay on the 1st May 1883. At the close of March 1884 the number of accounts standing in the books of these Banks was 6,361, and the balance at the credit of depositors ₹4,95,277. At the close of January 1885 the number of accounts is 10,786 and the balance at the credit of depositors ₹10,10,028. There is every reason, therefore, to be satisfied with the results. Out of the total number of depositors

at the end of March 1884, 1,191 were Europeans or Eurasians and 5,170 natives of India. Of the total number now shewn, 1,972 are Europeans and Eurasians and 8,814 natives of India.

The Presidency Savings Banks comprise a certain number of Sub-Savings Banks at small offices in the vicinity of Presidency towns as well as at the various town Sub-Offices, and the figures now given include the accounts at all these Sub-Offices.

Post Office Life Insurance in experimental stage.

20. The Life Insurance scheme for persons in the employ of the Post Office was introduced on the 1st February 1884, and has therefore been in force for a year up to the end of January 1885. The number of such persons who have insured their lives during this period is 339, and the total amount for which their lives have been insured is ₹4,89,675. Of these, 37 were Europeans and Eurasians and 302 natives of India.

During the first year of the scheme only about 3 per cent. of Post Office servants above the grade of postmen have taken advantage of it, and the scheme cannot therefore be said to have been an unqualified success hitherto. But in Madras, Bombay, and especially in Bengal, where English ideas and education are more wide-spread than in the rest of India, there is reason to believe that it is being appreciated. In Bengal 134 natives insured their lives, and in Madras 54. On the other hand, in the whole of the North-Western Provinces, Oudh, and the Punjab there were only 28 natives of the country willing to make use of the scheme.

Imports of gold and silver.

21. The net imports of gold and silver during ten months of 1884-85 and for each year since 1880-81 are given below. Attention was drawn in last year's Financial Statement to the annual absorption of gold by India. The year 1883-84 is the highest point reached since 1869-70.

Year.	Gold.		
	Imports.	Exports.	Net imports.
	₹	₹	₹
1880-81	3,68,10,576	1,68,586	3,66,41,990
1881-82	4,85,63,920	1,24,078	4,84,39,842
1882-83	5,09,51,324	16,42,639	4,93,08,685
1883-84	5,46,94,568	61,412	5,46,33,156
1884-85 (10 months)	4,57,55,811	7,29,476	4,50,26,335

Years.	Silver.		
	Imports.	Exports.	Net Imports.
	₹	₹	₹
1880-81	5,31,61,563	1,42,35,822	3,89,25,741
1881-82	6,46,63,884	1,08,73,390	5,37,90,494
1882-83	8,35,82,318	87,75,849	7,48,06,469
1883-84	7,40,85,065	1,00,23,525	6,40,61,540
1884-85 (10 months)	7,21,77,086	1,59,86,152	5,61,90,934

No improvement in Stock Notes.

22. Stock Notes have shewn no sign of improvement. Up to the end of December 1883 £190,400 worth of Stock Notes had been issued; at the close of 1884 the figure stood at £200,113. The subject has been under the consideration of the Government of India, who are about to address the Secretary of State upon it with a view of taking such measures as may possibly facilitate the use of the notes. It would be premature at present, until we know what the views of the Secretary of State are, to enter into any detailed discussion of this subject, which must be reserved for the ensuing year.

Detailed notes as to difference, above £10,000, in the Budget and Revised Estimates of 1884-85.

23. I proceed now to give the customary explanations under those heads where the receipts and the expenditure of the Revised Estimates shew considerable difference from the estimates taken in the Budget. Where the difference, whether increase or decrease, is not more than £10,000, I think it unnecessary to record here any explanation.

24. *Land Revenue* (*I*); Decrease, £341,900. This is a net decrease, due mainly to Madras (£271,600) and Bombay (£72,300). The large reduction under Madras was owing to the exceptional character of the rainy season in 1884-85. Not only had the south-west monsoon in certain districts failed, but the north-east monsoon was very deficient in the northern part of the Presidency, while, on the other hand, it was accompanied in the south by serious floods. Hence considerable remissions and suspensions of land revenue have been brought about. In Bombay a similar failure of the monsoon in the Southern Mahratta country has led to postponement, in part, of the demand. These are the suspensions of land revenue spoken of in paragraph 7.

25. *Opium* (*II*); Increase, £255,800. This is due in part to the fact that the opium sales having produced an average of ₹1,295-15-11 per chest, against ₹1,250, the figure taken in the estimates; and secondly, to a sale of 198 chests more than it was originally proposed to place on the market. The increased ratio of sales took place from the 1st January in the present year. There were delivered by Mr. Rivett-Carnac's Agency 2,268 maunds of Malwa opium, at a consistence of 90 per cent., being equivalent to the setting free of 1,712 chests of provision opium at 70 per cent. consistence. The amount of reserve at the close of 1885 is estimated at 18,297 chests.

Principal heads of Revenue.

26. *Salt* (*III*); Increase, £21,100. This is mainly due to an increase of £85,300 in Bengal, and £20,000 in Bombay, against which, however, has to be put a decrease of £93,200 in Madras. The decrease in Madras is attributed to diminished consumption of east coast salt; secondly, the large extension of sales under the credit system, of which the effect will be to transfer to 1885-86 revenues which would otherwise have been collected in 1884-85; thirdly, the substitution of excise salt for monopoly salt, and the consequent omission from both the expenditure and revenue sides of the accounts, of the cost of manufacture, which under the monopoly system the Government used to pay to manufacturers, recovering it subsequently with the duty; hence the only real decrease is that arising from decrease of consumption of East Coast salt.

27. *Stamps* (*IV*); Increase, £45,000. *Excise* (*V*); Increase, £216,600. The increase under these heads is general and normal, in years of average prosperity, and calls for no particular remarks.

28. *Provincial Rates* (*VI*); Increase, £53,600. This increase is the net result of increases and decreases in the several Provinces. The principal of these are, first, an increase of £66,000 in the Punjab, due to the circumstance that the assets of the Patwari's Fee Fund, (an incorporated Local Fund) have been transferred from under Land Revenue to this head; and, secondly, to a decrease of £22,400 in Madras due to postponement of collection of cesses to that amount till the ensuing year 1885-86.

29. *Customs* (*VII*); Decrease, £259,500. This is the net result of a decrease of £194,500 in British Burmah, £75,000 in Bengal, and an increase of £10,000 in Bombay. The cause of this decrease has been sufficiently explained in previous paragraphs of this Statement.

30. *Registration* (*X*); Increase, £15,200. This is due to the same cause as *Stamps* and *Excise*, namely, to general prosperity throughout the country during the year, and calls for no particular remark.

Post Office, Telegraph, and Mint.

31. *Mint* (*XIV*); Increase, £61,800, due to coinage of a larger quantity of silver than was anticipated, and to a gain arising out of a greater quantity of copper passing into circulation than was expected at the time the Budget was framed.

32. *Law and Justice* (*XV*); Decrease, £3,800, being mainly due to diminished receipts from the sale of jail manufactures, and from Magisterial fees and fines.

Receipts by Civil Departments.

33. *Marine* (*XVII*); Decrease, £28,000. Of this, £20,000 is due to the falling off in Dockyard services and supplies to other Departments. A reduction of £3,700 is also made in the Burma Estimates, owing to short receipts from sale of vessels and stores, freight, passage, tonnage, &c. Under Bengal a reduction of £5,000 is made owing to short pilotage receipts, arising from the slackness of trade.

34. *Scientific and other Minor Departments* (*XX*). The increase is £12,100; it is general and represents larger receipts than originally anticipated under Botanical gardens, experimental farms, sales of cinchona, and the other remaining subordinate heads of revenue.

35. *Interest* (*XXI*); Increase, £47,300. Of this £23,100 occurs in England and £24,200 in India. The increase in England is due to the temporary investment at favourable rates of the surplus cash balances owing to the loan of three millions which was issued in May 1884 not being required for the discharge of debentures till August. The increase in India is due to interest on over-drawals of capital by guaranteed railways.

Miscellaneous.

36. *Miscellaneous* (*XXIV*); Increase, £63,300. This is always an uncertain figure, and the above increase is mainly due to the receipts from lapsed deposits being expected to reach a higher figure than was foreseen in the Budget.

Revenue from Productive Public Works.

37. *State Railways, Gross earnings* (*XXV*); Decrease, exclusive of the East Indian Railway, £7,300. This is the net result of a series of figures of which the chief are, an increase of £10,000 in the Burma State Railways, £10,000 in the Eastern Bengal State Railway, and £97,500 in the Indus Valley State Railway, against a decrease of £47,500 in the Rajputana-Malwa Railway, £7,500 in the Nagpore and Chhatisgarh State Railway, £23,500 in the Northern Bengal State Railway, and £22,600 in the Calcutta and South-Eastern State Railway. The increase in Burma is due to additional mileage opened on the Sittang Railway, on which the receipts also have proved better than was expected. On the Eastern Bengal State Railway the improvement is due to the following causes. After the preparation of the original estimate it was resolved to amalgamate the Calcutta and South-Eastern State Railway and the Poradaha-Damukdia Section of the Northern Bengal State Railway with the Eastern Bengal State Railway; the figures of the Revised Estimates, therefore, represent the transactions of the combined undertakings. This estimate also includes a special credit of £29,500 on account of the estimated share of the assets of the Fire Insurance and Flotilla Reserve fund of the late Eastern Bengal Guaranteed Railway, credited to the Imperial Government. The increase in the Indus Valley State Railway is owing to the development of the wheat and seed traffic on that line. With regard to the decreases, that of the Rajputana Railway is due to loss of traffic in consequence of breaches on the line and on the Bombay, Baroda, and Central India Railway during the monsoon; to slackness of the wheat trade; and to a reduction of the rate of charge against the Rewari-Ferozepore State Railway for hire of rolling-stock. The decrease on the Nagpore-Chhatisgarh Railway is ascribed chiefly to the slackness of the grain market, and to reduction in the rates for carriage of grain and salt. The decrease in the Northern Bengal State Railway is due to the transfer of the Poradaha Section of the line, as already explained, and to the reduction of the charge levied for crossing the Ganges on the opening of the extension of the

same section to the new Ghat at Golabnagar. The decrease in the Calcutta and South-Eastern State Railway is due to its amalgamation with the Eastern Bengal State Railway from the 1st July 1884, and while the Revised Estimate represents receipts only up to the 30th June, the Budget Estimate of 1884-85 was based on a whole year's transactions. On the East Indian Railway there is a decrease of £580,000. This formidable decrease is due to the stagnation in the wheat trade which has formed the subject of preceding remarks.

38. *Guaranteed Railways, Net traffic receipts* (*XXVI*); Decrease, £239,000. This is the net outcome of the following figures:—

	Increase.	Decrease.
	£	£
(1) Eastern Bengal Railway	...	73,000
(2) Madras Railway	45,000	...
(3) South Indian Railway	...	6,000
(4) Bombay, Baroda, and Central India Railway .	...	10,000
(5) Great Indian Peninsula Railway	...	30,000
(6) Oudh and Rohilkund Railway	...	75,000
(7) Sindh, Punjab, and Delhi Railway . .	...	90,000

(*1*) *Eastern Bengal Railway.*—The figures are for the three months April to June 1884-85, the line having been taken over by Government from 1st July. The decrease on the Budget resulted from a decline in traffic, and from heavy outlay in excess of Budget provision on establishment and other charges, found necessary in connection with closing the Company's accounts and transactions.

(*2*) *Madras Railway.*—The improvement is due to the traffic being fairly good, and to an expected reduction of £25,000 on account of expenses.

(*3*) *South Indian Railway.*—Disastrous floods along this line caused several breaks in it, and interrupted the traffic for a comparatively long period. The disappointment of Budget expectations is due to these causes.

(*4*) *Bombay, Baroda, and Central India Railway.*—Breaks in the line during the last monsoon have brought about a reduction compared with the Budget Estimate.

(*5*) *Great Indian Peninsula Railway.*—The decrease is due to the Budget provision for expenses being insufficient by £50,000.

(*6*) *Oudh and Rohilkhund Railway.*—The traffic not having proved as good as it was expected it would prove, combined with the circumstance of the line being extended at a later date than was anticipated, has resulted in the Revised Estimates taking a lower figure than the Budget of 1884-85.

(*7*) *Sind, Punjab, and Delhi Railway.*—The Revised Estimate of receipts is £80,000 worse than the Original Estimate of the year. The goods traffic fell off considerably from June to September 1884, owing chiefly to the low price of wheat in Europe. Of the decrease of £80,000 the major part of £50,000 is, however, nominal, and is thus explainable—

1st,—£30,000 is due to a change in the system of accounting for receipts and charges on account of mileage and demurrage by which the *net result* is now shewn on the receipt or charge side of the Account, as the case may be, instead of the gross amounts being shewn on both sides of the Account, as formerly.

2nd,—£15,000 is due to a reduction in the rates for carriage of revenue stores. These changes have led to a corresponding reduction in charges. In the Revised Estimate of expenses £10,000 in excess of the Budget Estimate of 1884-85 have had to be provided to meet the cost of carrying out extensive renewals of permanent way and carriage and wagon stock. These renewals are expected to cost over £80,000, and but for this special and unforeseen expenditure

there would have been a satisfactory reduction over and above the nominal reduction due to the change in system already referred to.

39. *Irrigation and Navigation* (*direct receipts*) (*XXVII*); Increase £105,500. Compared with the Original Estimate the Revised shews an improvement of £105,500, being the net result of the following differences :—

	Increase.	Decrease.
	£	£
Bengal	...	5,000
N.-W. P. and Oudh	76,400	...
Punjab	36,100	...
Madras	...	2,300
Bombay	300	...

The decrease in Bengal is ascribable to a falling off in the water-rates and Navigation receipts on the Orissa and Midnapur Canals. The increase in the N.-W. P. and Oudh is due to the exceptionally favourable rabbi season of 1883-84 and a good kharif season in 1884-85.

In the case of the Punjab the increase represents the net balance of an increase on the Western Jumna Canal, and of a falling off on the Bari Doab and Sirhind Canal. The increase on the Western Jumna Canal is due to the area of irrigation being increased because of scanty rainfall during the rabbi season of 1883-84, and the early part of the kharif season of 1884; while the falling off on the Bari Doab and Sirhind Canals is the result of irrigation being less than was anticipated. The decrease in Madras is due chiefly to the falling off of Navigation receipts from tolls and license fees. The increase in Bombay is trifling and does not call for any special remarks.

40. *Portion of Land Revenue due to irrigation* (*XXVIII*); Increase £13,600: being the net outcome of figures in which the only notable increase is £16,600 in Madras, caused first by the completed channels of the Sangam Anicut project having been brought into operation for the first time, during the year; secondly, to the extension of irrigation in the Godavery and Kistna Delta systems; and thirdly, to the rate of calculation of charges in the Civil Department having been reduced from 7·2 to 5 per cent.

41. *State Railways* (*XXIX*); Increase £38,200: mainly due to £17,500 under the Rewari-Ferozepore State Railway, arising from the extension of the line to Ferozepore, and to the fact of the Fazilka branch having been opened earlier than was expected; and to £22,500 on the Sind-Peshin State Railway, due to the conveyance of labourers and large quantities of material for the northern section of this line, formerly known as the Candahar State Railway.

Receipts on account of Public Works not classed as Productive.

42. *Southern Mahratta Railway* (*XXX*); Increase £32,500, due to an extension of traffic.

Expenditure.

43. *Interest on Ordinary Debt*; (1) Increase, £241,100. Of this increase £199,400 occurs in England, and is due chiefly to the payment of £184,200 on account of discount on the issue in 1884-85 of India 3 per cent. stock of 3 millions, and to the charge for interest on this loan (estimated at £67,500 in 1884-85). On the other hand, there is (1) a decrease of £31,500 in interest on Debentures, owing to £5,000,000 only having been renewed instead of £6,906,500, as provided in the original estimate; (2) a decrease of £15,000 on temporary loans; and a decrease of £4,000 in the payments of outstanding dividends. The small difference under India calls for no special remark.

Interest.

44. *Opium* (6); Increase, £593,600. This occurs principally in Bengal, and is due to the exceptionally large crop of 1883-84. Explanation has already been given in the body of the Statement in regard to this increase.

Direct demands on the Revenue.

45. *Salt* (7); Decrease £62,100. The saving is due to a reduction in salary, establishment and contingent charges, and in charges for manufacture, purchase, and freight. In Madras the gradual supersession of the monopoly by the Excise system has also resulted in diminished expenditure. In Bombay the saving occurs chiefly in the salt establishment for Portuguese India.

46. *Provincial Rates* (10); Increase £58,400. This arises almost wholly in the Punjab, and is due to the transfer from "5. Land Revenue" to this head of the charges debitable to the Patwaris Fees Fund.

Post Office, Telegraph, and Mint.

47. *Telegraph* (16); Decrease £33,500. The saving occurs in the Indian Telegraph Department, and is due chiefly to restricted outlay on works, and to savings in establishments.

48. *Law and Justice* (19); Decrease £84,900. The decrease occurs in almost all the provinces, and is due principally to cheapness of grain and to limited expenditure on jail manufactures followed by diminished receipts.

Salaries and Expenses of Civil Departments.

49. *Police* (20); Increase £11,900. The Central Provinces, Burma, and Madras shew a saving. The other provinces provide for small increases to meet the growing requirements of the Department. The decrease in the Central Provinces amounts to £17,000, and is chiefly due to the revised scale of salaries sanctioned in re-organising the Police establishment not having been introduced as early as was expected.

50. *Marine* (21); Decrease £29,700. This is made up of decreases in India and increase in England. The decrease in India amounts to £42,700 and occurs chiefly in expenditure on account of dockyard services and supplies, followed by diminished receipts. The increase in England is due to charges on account of repairs of the steamer "Tenasserim."

51. *Education* (22); Decrease £26,400. This occurs in small amounts in almost all the provinces, and is due to excessive provision in the original estimate.

52. *Political* (25); Increase £167,800. The increase is mainly due to the following items:—

	£
Arrear payment of Amir's subsidy	29,800
Afghan Delimitation Commission	120,000

Miscellaneous Civil Charges.

53. *Territorial and Political Pensions* (27); Decrease £26,600. The variations occur in small amounts in all the provinces except the North-Western Provinces and Oudh, where there is a decrease of £10,000 due to the original estimate of the year having been taken at too high a figure.

54. *Stationery and Printing* (30); Decrease £37,100. The charges under this head are expected to fall short of the amount they were originally expected to reach, by £37,100. Of this amount a saving of £14,300 occurs in India, the saving under England being £22,800. In England the saving is due to less outlay on stores.

Famine Relief and Insurance.

55. *Famine Relief* (32); Increase £12,000. This figure is thus distributed—

	£
Bengal	5,000
Madras	2,000
Bombay	5,000
	12,000

No provision was made in the original estimates. But in Bengal, the prevalence of scarcity in the western districts; in Madras, devastating floods in South Arcot and some of the southern districts; and in Bombay expected distress in the Kaladgi district, render the small assignments made, necessary.

56. *Protective Works, Railways* (*33*); Decrease, £240,500. The decrease is due to the refund to the Government of the North-Western Provinces and Oudh of the contribution of £250,000 made from Provincial balances towards the construction of the Jhansi-Manickpur Railway, and the consequent curtailment of expenditure to that extent.

57. *Protective Works, Irrigation* (*34*); Decrease £39,500. This figure is made up thus :—

	£
Bengal, Increase	40,000
India (General and Political) Decrease	55,200
Madras ditto	7,200
Bombay ditto	17,100
Net .	39,500

The increase under Bengal is due to an additional grant sanctioned during the year for expenditure on the Orissa Coast Canal. The decrease under India (General and Political) represents the unutilised portion of the reserve held by the Department of Public Works to meet any applications for additional grants that might be made during the course of the year. The decrease in Madras is due to slow progress of work, for want of labour, on the Rushikulya project. The decrease in Bombay is due to short expenditure on the Nira Canal and the Mhaswad Tank, owing partly to the scarcity of labour and partly to the question of the waste weir of the Mhaswad Tank remaining unsettled till late in the year.

58. *Reduction of Debt* (*35*); Increase, £18,000. This is due to a re-adjustment of the grants under the several heads subordinate to the major head "Famine Relief and Insurance" in order to make up the total grant to £1,500,000.

59. *State Railways* (*working expenses*) (*36*); Increase, £33,600. The increase is due to the following causes: in the Rajputana-Malwa State Railway to the heavy renewals, to repairing the breaches on the line, and to charges now made under contract with the Bombay Baroda and Central India Railway for working this line; in the Nagpur-Chatisgarh Railway, to heavy expenditure incurred in repairing flood damages; in the Burma State Railways, to the transfer to the Revenue Account of the maintenance charges of the new lengths of the Sittang Valley Railway originally included in the Capital Accounts, in the Tirhoot State Railway, to extensive renewals of sleepers and permanent-way; in the Northern Bengal State Railway to extensive renewals of sleepers and ballast and repairs of vessels. There is, however, a large decrease of £17,500 in the working expenses of the Indus Valley State Railway owing to a reduction in the expenditure of the Locomotive Department chiefly under fuel. *Expenditure on Productive P. W. (Revenue Account.)*

60. *East Indian Railway* (*Working expenses*); Decrease, £161,200 :—

	£
Working expenses	120,000
Surplus profits, and contribution to the provident fund . .	41,200
TOTAL .	161,200

The reduction in the working expenses is due to reduced traffic and to a curtailment of outlay on renewals, &c., and that in surplus profits to a reduction in the net profits of the line.

61. *Guaranteed Railways* (*Surplus profits, Land and Supervision*) (*37*); Decrease, £34,900. The decrease occurs principally in Bombay and Bengal (£10,800) owing to a larger credit expected from the Southern Mahratta Railway

Company on account of Supervision, and £13,600 to the payment of surplus profits, as the Eastern Bengal Railway did not earn a surplus during the half-year ending 30th June 1884.

62. *Irrigation and Navigation; working expenses* (*38*); Increase £19,700. This occurs as follows:—

	£	£
Imperial Decrease	5,100	
Provincial Increase	24,800	
Net increase .		19,700

The decrease under Imperial is the net result of savings in establishment charges in the Punjab and increases in Madras, where additional expenditure has been incurred for repairing the flood damages on the Godavary and the Cauvery Delta systems.

The increase under Provincial occurs principally in the North-Western Provinces and Oudh, where additional outlay has been necessary for repairing the damages done by heavy floods to the Nadrai Aqueduct on the Lower Ganges Canal.

63. *Charges in respect of Capital* (*39*); (*a*) Interest on debt. Increase £10,400. The increase here is chiefly due to provision on account of interest on the debentures and debenture stock of the Eastern Bengal Railway.

(*b*) *Annuities in purchase of Guaranteed Railways* (*including Sinking Funds.*)—Decrease £34,500. This decrease is nominal, as it is due to the issue of India Stock in redemption of a further portion of the Annuity of the East Indian Railway not provided for in the original estimate, and to change in the date of the payment of the Annuity of the Eastern Bengal Railway.

(*c*) *Guaranteed Railways Interest.*—Decrease, £17,800. This occurs in England, and is due to capital subscribed not having been paid up as early as was expected.

Expenditure on Public Works not classed as Productive.

64. *State Railways* (*Capital Account*) (*40*); Increase, £24,400. This is composed of a decrease of £17,500 under Imperial, and of an increase of £41,950 under Provincial. The saving in Imperial is due to transfer of grant from this head to "43. Frontier Railways" to meet outlay on the Northern Section of the Punjab Northern State Railway. The excess under Provincial is due to transfers sanctioned during the year from "46. Civil Buildings, Roads and Services," to this head.

65. *Southern Mahratta Railway* (*42*). The increase is £58,800, of which £27,800 falls under interest payments and £31,000 under working expenses.

66. *Frontier Railways* (*43*); Increase £211,700. During the year additional grants amounting to £450,000 and transfers from other grants were sanctioned for the vigorous prosecution of these Railways. From the consolidated grant thus arrived at a portion has been transferred to "Expenditure on Productive Public Works, Capital Account."

67. *Irrigation and Navigation* (*44*); Increase £29,900. This occurs principally in the Provincial Section of the estimates, and is due to additional grants having been sanctioned by the Chief Commissioner of British Burma, and by the Government of Madras during the year.

68. *Military Works* (*45*); Increase £50,400. The increase is chiefly due to additional grants sanctioned for the Aden defences, and to the refund of an excess payment on account of the Army Head Quarter Offices, Simla.

69. *Civil Buildings, Roads and Service* (*46*); Increase £103,700. The increase occurs in all the provinces in the Provincial section of the estimates, and is due to additional grants sanctioned during the year.

70. *Army.*—Decrease £128,400. The gross Budget figures were £16,098,600. The Revised Estimate is £15,970,200. The decrease is £128,400. This is due in part to the actual strength of British troops having been below the established strength; to the withdrawal, early in the season, of two regiments of British infantry for service in Egypt, in anticipation of their transfer to England in the ordinary course of relief; to favourable prices; to continued savings in medical supplies and services; and to reduced charges for railway and other transport, the estimate for which was too high. On the other hand the Zhob Valley expedition is estimated to cost £60,000. *Army services.*

71. *Exchange on transactions with London* (49). The amount provided in the Revised Estimate of 1884-85 is below that assigned in the Budget Estimate of 1884-85 by £285,200. The following table compares the original and present figures. The + entries represent gain, and the — entries loss by exchange:— *Exchange on transactions with London.*

	Budget, 1884-85.	Revised, 1884-85.
	£	£
Secretary of State's Bills . . .	—3,807,700	—3,337,100
Advances for Suakim Expedition .	...	—75,000
Hong-Kong Bills	—30,000	—50,600
Guaranteed Railways . . .	+147,200	+150,200
East Indian Railway . . .	+135,100	+98,100
Rajputana-Malwa Railway . .	...	+16,800
Southern Mahratta Railway . .	—93,000	—136,700
Military, Public Works, and Civil .	+110,300	+81,400
TOTAL	—3,538,100	—3,252,900

The reduction of exchange under the Secretary of State's Bills is due to the following cause. When the Budget of 1884-85 was framed, the Secretary of State fixed his drawings at £16,500,000 true sterling, the rate of exchange adopted being 1*s.* 7⅛*d.* the rupee. During the course of the year, however, owing to an unexpected receipt of £1,704,400 on account of capital of Southern Mahratta Railway, and owing to the expected recovery of £325,000 true sterling on account of advances now being made in India towards the Suakim expedition, as well as to other causes, the Secretary of State has been able to relieve his drawings on India by £2,704,700. The present estimate of Council Bill drawings is £13,795,300 true sterling, and the rate of exchange at which these drawings have been taken is 1*s.* 7·3*d.* The provision on account of advances towards the Egyptian expedition is the exchange at 1*s.* 7·5*d.* the rupee on the expected recovery in England of 40 lakhs of rupees advanced from the Indian treasuries. *Budget Estimate, 1885-86.*

Budget Estimates, 1885-86.

72. The Budget Estimate for 1885-86 is as follows:—

	£
Revenue	72,090,400
Expenditure	71,582,300
Surplus	508,100

The surplus presented for 1885-86 is, it will be seen, £508,100. To estimate, however, the real significance of this surplus attention must be directed to two points, which are material to a proper comprehension of the significance of the figures here presented.

In paragraph 58 of his Financial Statement for 1880-81, Sir John Strachey spoke as follows:—

"When the serious character of the financial obligations of the State in times of famine had been recognised, it became the duty of the Government of India to make sure that the public resources were adequate to meet the fresh strain imposed upon them. Upon careful enquiry we came to the conclusion that we must contemplate a liability from famine amounting, in loss of revenue and actual expenditure, to, on an average, £15,000,000 in ten years. It was clear that this liability must be included among our ordinary obligations, and that it would have been a fatal error to go on increasing the public debt to meet charges which must periodically occur. To enable us to discharge the liability thus estimated, we determined to aim constantly at a surplus of £1,500,000, supplemented by a further surplus of £500,000 to provide for extraordinary and abnormal demands other than famine, as, for example—to name the most serious of such demands—for war."

Remarks on the nature of the surplus above exhibited.

Happily the most serious of such demands has not been made upon us, but in connection with our military position in India we decided, in the course of last year, to improve our communications, whether by railway or by road, upon our North-Western frontier; and, with the concurrence of the Secretary of State, we have determined to devote annually to capital expenditure a certain amount from our revenues until such time as our railway communications are completed. This year we have so devoted in all, inclusive of £85,000 for harbour defences, a sum of £585,000, besides an addition of £100,000 to the ordinary grant for roads, to be expended on certain frontier roads. This sum we may claim to look upon as equivalent, in its nature, to the surplus indicated in Sir John Strachey's remarks as desirable to have at our disposal for extraordinary and abnormal purposes such as those to which this sum is to be now applied. I mention this here, as it were *in limine*, because otherwise, in exhibiting the estimated surplus, the nature of our proposed transactions during the ensuing year may be misunderstood, and the conclusion may be formed that our revenues have been confined to normal expenditure unconnected with capital charges, such as those I am describing. It appears to me a matter for very great satisfaction that we have been enabled to devote a portion of our revenues to the execution of the policy indicated in the paragraph I have above quoted. All difficulties notwithstanding, we have been enabled to look to our revenue resources to meet demands which are extraordinary and abnormal, and to enable us to devote to them funds which were designed especially for emergencies of this nature. I shall enter presently more into detail on this matter, for it is closely connected with the main feature of the year which I am about to explain; but, for the reasons I have given, I deem it necessary to place these remarks in juxtaposition, as it were, to the balance above indicated. The second point to which attention must be directed is that, if we are to exclude from our surplus the grant from revenue for capital purposes, the surplus actually exhibited does not arise from an increase of revenue over expenditure; but from the fact that our expenditure, so far as it is effected in pounds sterling in England by means of sums made available there to the Secretary of State, is not represented at its exchange value in our accounts. In other words, the loss by exchange on £2,225,000 sterling is not entered in the accounts presented with these statements; and as that figure amounts to £585,000, by this amount are we, in effect, understating what should be regarded as our liabilities of expenditure. If we include on the one hand £585,000, the grant for railways and certain harbour defences, being capital expenditure, in our revenue expenditure, and exclude £585,000 from our surplus as representing the unexhibited loss on exchange, we arrive at about an equilibrium of revenue and expenditure. This much premised, I may go on to examine the nature of the provisions for the coming year.

Four main features of the coming year.

73. The main features of the coming year are four: *first*, that it will give an effect, in the Budget, to the measures recommended, at the instance of the Government of India, by the Parliamentary Committee, for the construction of railways, with such further development as the circumstances of the time render imperative. *Secondly*, that it compels us, owing to the temporary stagnation of the wheat and rice trade, to take estimates for our railway and customs receipts at a considerably lower figure than those which in a normal year we should look for. *Thirdly*, that we have been compelled, owing to the fall in the value of silver, to take so low a rate of exchange as 1*s.* 7*d.* for our exchange. *Finally*, that we have devoted the sum of £500,000 above mentioned from our revenues for the improvement of our railway communications, besides certain further subsidiary sums for frontier roads and the defences of Aden and of certain harbours in India.

Railways.

The Parliamentary Committee's recommendations.

74. The report of the Parliamentary Committee on Indian Railways has been long since published, and contains a great deal of matter which has no direct bearing upon the financial questions discussed in this Statement. But the Committee have made certain recommendations, which are in part still under the consideration of the Government of India and of the Secretary of State, and which, whatever may be the decision finally arrived at in regard to them, will have a very considerable effect upon our finances. I propose to summarise the recommendations to which I allude, and to point out, so far as can at present be seen, in what direction they will modify the arrangements hitherto existing, and what are the means which we possess to enable us to meet them from our resources. Briefly, the arrangements hitherto existing were these. Railways were divided into two classes, Productive and Protective; capital expenditure on the former, which were of a remunerative character, was from loan; on the latter, which were for protection against famine, and not necessarily remunerative, expenditure was from what is known as the Famine Insurance grant. The annual limit to loan expenditure of all kinds was £2,500,000, fixed by a Parliamentary Committee in 1879, in which was included expenditure on canals; the annual expenditure on Protective lines was £500,000. There was no formally sanctioned programme, whether as to works, or the time within which works were to be executed. These were the arrangements existing when the Parliamentary Committee of 1884 met; it remains to indicate the points on which that Committee proposed modifications. *Firstly*, the Committee recommended that the technical distinction which has been hitherto made between Protective and Productive lines should not be maintained. They proposed, therefore, that railways needed for protection from famine, or for the development of the country, be made as required, whether they be technically considered Protective or Productive. But they were strongly of opinion that the bulk of the lines made should be self-supporting. *Secondly*, they were of opinion that a careful forecast having been made of future requirements for Public Works over a considerable term of years, such a scale of expenditure upon railways should be adopted as could reasonably be maintained. *Thirdly*, they were of opinion that the amount proposed to be spent in railways by the Government of India during the next six years was moderate, and that, looking to the experience of past years and to present prospects there is very fair ground for expecting that an extension of the railway system in India on the scale proposed would have most beneficial effects. *Fourthly*, with regard to the recommendation of the Government of India that interest on the sum of £11,250,000 to be spent on Productive and Protective Railways should be partly provided by hypothecating £200,000 of the annual Famine grant above specified, they were of opinion that any such application of any portion of that grant would be entirely contrary to the purposes for which the fund was created, and they could not

concur in this suggestion. *Finally*, while expressing an opinion that the present limit of borrowing fixed by the Committee of 1878-79 at £2,500,000 might safely be enlarged, they thought the full responsibility of deciding upon the amounts to be borrowed from year to year, should rest with the Secretary of State in Council. They wished, in conclusion, most emphatically to endorse the declaration of the Government of India that the proposed extension of railways should not involve additional taxation.

Effect of their recommendations.

75. The practical effect of these conclusions will be somewhat as follows. Railways, whether Protective or Productive, whether, that is to say, railways solely designed as safeguards against the effect of famines, or whether partly or in whole projected with the view of opening up or connecting the centres of production or of trade, will alike be charged, so far as is necessary, to loan expenditure. Hitherto the latter only have been so charged, expenditure on Protective railways having been limited to the £500,000 annually available from the Famine Insurance grant, and to such small sums as could be spared from Revenue. The forecast having been made, it will be necessary to provide funds for its execution; but, so far as concerns capitalising from the Famine grant any portion of the funds necessary for payment of interest to the Companies to whom it was proposed to confide, under a guarantee, certain important railways, the proposal must be abandoned, and the sum of £500,000 hitherto spent in construction of Protective railways, will continue to be contributed from Revenue to Capital expenditure. The interest to be paid on account of the new guaranteed railways, therefore, as well as any additional interest to be paid in consequence of extension of the limits of our annual loans, will be furnished from the general resources at the disposal of the Government of India. The resources to which we had hoped to turn to assist us in part in this obligation, have been, so far as they depended on the partial capitalisation of the Famine Insurance grant, denied us; while, on the other hand, the Parliamentary Committee have endorsed the declaration of the Government of India that the development of its railways is not to be carried out at the expense of further taxation. Apart, however, from the scheme of railways which was laid before the Parliamentary Committee, the Government of India has since thought it necessary to propose, and the Secretary of State has approved, the carrying out of a scheme to strengthen our Railway communications on our North-Western frontier, the cost of which, inclusive of the Sibi-Quetta Railway, will amount to not less than £5,200,000. The cost of the railways remaining at the commencement of 1885-86 to be constructed during the ensuing five years by Government as distinct from those which it is desired to make over to Companies, is estimated, inclusive of extra capital for open lines, at about £19,000,000, the total of the two classes of communications thus amounting to £30,250,000.

To assist us in carrying out our proposed increased Railway expenditure, the recommendations of the Parliamentary Committee that the limit of annual loan should be raised above the limit hitherto prescribed, has, of course, received the attention which it deserved, and the matter is still under reference to the Secretary of State, who has not as yet given a final decision as to the amount which, in the discretion left him, he desires to fix. Besides the sum to be so raised by loan, in respect of capital expenditure, which from its magnitude we may put in the first line, we have further, in the second place, the annual grant of £500,000 above alluded to as hitherto devoted from the Famine Insurance Fund to Protective railways; and in the third place, we are desired by the Secretary of State to estimate in our Budget for such available surplus as it may be possible annually to provide. On this point, again, it has been found necessary to make a further reference to the Secretary of State; and it will be sufficient

for the present to say that in the ensuing year the sum of £500,000, as stated in paragraph 74 of this Statement, has been placed at the disposal of the Public Works Department for Railway capital expenditure. As to the liabilities which these three combined sources of expenditure will throw upon our Budget Estimates, we cannot speak with certainty until the decision of the Secretary of State is received, as to the limit within which the annual loan is to be fixed during the term of the execution of the proposed works. Until that sum is known, it is obviously useless to hazard any forecast as to the annual amount which we shall be called upon to set aside on our estimates to meet the interest on our own loans. Then there will be the annual grant of £500,000 to be provided from the Famine Insurance Fund. Next will come an annual grant from our revenues of such amount as they can provide. Finally, there will still remain, in the fourth line, to be met from our revenues, the interest required on the guarantee to be given to the Companies through whose agency it has been proposed to construct certain important lines. The net interest to be so paid has been calculated by the Accountant General, Public Works Department, as follows:—

	£
1st year	85,000
2nd „	157,500
3rd „	210,000
4th „	250,000
5th „	255,000
6th „	160,000

In his evidence before the Parliamentary Committee, Mr. Westland, Comptroller-General of Accounts, whose judgment on matters connected with Indian finance merits the most respectful attention, estimated that the Government of India, after providing for the interest on its own proposed loans and for the projected guarantees, and for the grant from the Famine Insurance Fund, but exclusive of any other regular grants from revenue for capital expenditure, could estimate for a surplus of £480,000 on a safe calculation of the Revenue and Expenditure, and at a low forecast of opium. He left out of his calculation arrangements with the Civil Funds which might be expected to have the immediate effect of relieving the Revenue Account for many years to come of about £200,000 or £250,000, and arrangements for the payment of non-effective charges to the War Office which would relieve the Revenue Account, for a few years at least, of £400,000 or £500,000. Mr. Westland, as above stated, included in his figures the entire reservation (since endorsed by the Parliamentary Committee) of the £1,500,000 Famine Insurance; and he finally explained that the surplus of £480,000 above stated might be reasonably expected to increase by about £414,000 every year; but he added that every farthing fall of exchange cost Government directly about £220,000, so that if exchange were to fall a farthing every year, the annual amount on the present financial position would be reduced from £414,000 to £194,000. It should be remembered, he added, that a fall of exchange tends in itself to increase revenue, presumably by stimulating the export of our Indian produce, and therefore the receipts of our railways.

76. Since Mr. Westland gave his evidence, the estimate of the exchange has fallen, not one, but two farthings, a sum equivalent, at his calculation, to £440,000, or more than the first year's annual increase which he estimated. There has also been added, as above explained, to the original scheme of the Government of India, an estimate of £5,200,000 for frontier railways, necessitating large grants from revenue; so that on the one hand our requirements have considerably increased, while, on the other, the annual estimated increase of surplus has, for the present year, been absorbed. Should exchange remain stationary, and by the revival of trade and the normal expansion of our revenues, should the annual increment

Effect on Indian revenues of railway proposals subsequent to those submitted to the Parliamentary Committee, and of the fall in exchange.

of the surplus which in the calculation above referred to was anticipated, be realised, our position at the commencement of the ensuing year will be certainly stronger than at present; but if we are further to obtain the indirect benefit from the late fall of exchange which is shadowed in Mr. Westland's remarks, it will be necessary that the price of wheat should so far rise in Europe as to stimulate a return of activity in the export of our wheat, and in the operations of our railways. Should we, on the other hand, be compelled to take, on our estimates, a lower rate of exchange than 1*s.* 7*d.*, and should the stagnation of our export and our rice trade continue, the normal surplus indicated in Mr. Westland's calculations, let alone any possible annual increase thereto, will be matter of extreme doubtfulness. The above calculations, moreover, assume that in other respects the administration of the country will call for no considerably greater expenditure than that which at present is regarded as our normal expenditure. How far this assumption may be verified it is at present impossible to conjecture. We have since judged it necessary, for example, to add to our revenue grants for railway and other capital expenditure. To the criticism that will naturally be made that if, in one direction, increased expenditure is forced upon the Government of India, it should seek to restore the balance by economies in other quarters, the answer must be made that, in urging upon the authorities in England the economies resulting from a study of the Report of the Army Commission, the Government of India, though unhappily with but little success, did, in fact, adopt the course above indicated. The reasonableness and the expediency of its recommendations become more evident at a time when, in regard to the very Military estimates which already weigh so heavily on our resources, there are grounds for apprehending fresh demands for further increase. Apart from this, however, it requires perhaps to be again pointed out that under the system of Provincial contracts in which the several provinces have assigned to them for a term fixed charges and corresponding revenue, there are but few branches of expenditure reserved to the Government of India over which it exercises undivided control. It may, in a time of calamity, insist on temporary reductions; but it would be against the whole spirit of its arrangements, if it sought to acquire for itself increased resources during the term of contract at the expense of the revenues assigned to the Provinces, unless in case of pressing necessity. Such as are the sources of expenditure within the Government of India's direct control, they are of a nature which renders reduction peculiarly difficult; as, like the Post Office and the Telegraphs, they grow with the growth of the necessary requirements of the country, or with the extension of our Railway system; or, like the Mint, are almost beyond the power of Government to check, depending as they do on the ebb and flow of the precious metals; or are, finally, as in the case of works of irrigation or Protective Railways, essential to success in that vital struggle against famine and the financial losses which famine entail to which the Government of India is deliberately committed. What I have now said will, I think, be sufficient to shew that while in circumstances such as those which at this moment exist, and in spite of the recent heavy fall in exchange, there may be no reason to apprehend in the immediate future any insufficiency of our resources as estimated on the basis of the reforms introduced by Sir John Strachey and Sir Evelyn Baring, it would be more than hazardous to affirm that, in view of the possibilities threatening us at the commencement of 1885-86, there is at present no cause for anxiety. The Government of India is constantly called upon to entertain projects of various kinds, tending to reduction of taxation. No one is more anxious than I am to equalise the burden of taxation, and especially to lighten it on the classes—unhappily the large majority in this country—to whom taxation, however light, is necessarily onerous; but we are compelled, both from the necessities and the advantages of our position, to take in the whole financial

horizon, and if difficulties present themselves to us which are invisible to a more restricted survey, we can but deplore, while admitting in the abstract the cogency of much that is urged upon us, our inability to meet the views pressed upon our consideration. We have, indeed, during the present year, as in paragraph 2 of my last year's Statement I promised, taken the question of Court-fees into consideration, and we have consulted the several Local Governments as to modification in the Court-fee duties. We are not yet in possession of all their replies, but it is obvious that when, in the course of the ensuing year, we take up the subject for disposal, we shall have to give weight not only to the merits of this particular question, but to its relation to taxation of other kinds. We shall have, moreover, to consider this, and kindred proposals, in their relation to the necessities of our position, should there be reason to apprehend that we may be called upon to provide upon our estimates for considerably reduced assets resulting from further loss by exchange, or for consideraby increased expenditure. I can at present in no way indicate what our position on this important point is likely to be; it is one of the objects of this Statement to place before the public the materials for forming such an opinion as can be at present formed, so that it may frame its own conclusions; but I think it will at least be apparent, from what I have said, that when we are simultaneously called upon by one to lower the scale of our Court-fees, by another to abolish the License Tax, by a third to abolish the Export Duties upon rice, we cannot but feel that these representations are made without adequate information as to their probable effect on the budgetary equilibrium of the country. I hope that the remarks which I have recorded above, and those which in the course of this Statement I shall have to make, will in some degree assist the public to understand what are the difficulties which await us in dealing with suggestions for reduction of taxation, or even for such redistribution of taxation as sacrifices on the whole any proportion of the resources now at our command. In the course of the ensuing year the final conclusions to be adopted on the Report of the Parliamentary Committee will have been settled. During the course of 1885-86 it may be expected that on the one hand we shall be in a better position to judge as to the prospects of a return of our hitherto active export trade, and of our position in regard to exchange, and on the other, to estimate the full amount of the liabilities which are likely to be entailed by the prosecution of our Railway schemes, as well as to gauge the pressure of exigencies, the final outcome of which it is not at present possible correctly to estimate.

Financial relations of the Government of India with the Provincial Governments and Administrations.

77. While treating of the subject which has been dealt with in the above remarks, it is desirable that I should add a few words in regard to the financial relations of the Government of India with the several Local Governments and Administrations, as regulated by the terms of the Provincial contracts. It was not to be expected that a series of arrangements based, at the best, on the experience of comparatively few years, and on conditions on the whole so uncertain as those which surround the financial administration of India, should have presented no points to criticism, or offered no unforeseen difficulties. All allowance made, however, it may be confidently stated that the several Provincial contracts which are now entering on the fourth year of their quinquennial term, have proved to be equitable, and to have been founded upon calculations which leave the Governments severally concerned a margin of revenue over expenditure sufficient for their wants. The balances temporarily held by the Local Governments during the Afghan War were repaid them, in the course of the year 1881-82, to the amount of £670,000, as explained in my last Financial Statement. In some cases the existence of these balances has led the local authorities to embark upon a scale of expenditure which, as the balances approached exhaustion, it has been found impossible to maintain; and it is conceivable that the

Provincial finances would have been, on the whole, conducted with greater economy had there not occurred to them this windfall, bringing with it almost inevitably an inducement to increased expenditure in view of the various wants and necessities which never fail to be urged on the several Governments and Administrations. It was mainly with the object of guarding against the possible effects of too sanguine a view of its resources, which the existence of these balances was likely to encourage, that the Government of India, under instructions from the Secretary of State, fixed the minimum of balances for each province indicated in paragraph 109 of last year's Financial Statement. This element of risk notwithstanding, however, the system inaugurated by Lord Mayo, which has now fully taken root and become part of our system of local administration in India, has continued during the last three years to work greatly to the advantage of the several Governments who share in it. Friction has been reduced to a minimum; and if, as was inevitable, questions have from time to time arisen regarding the amount of assistance to be afforded by the Government of India to this or that Local Government in regard to some particular project or some reform involving an increased outlay of funds, they have given evidence of the existence of a spirit of mutual concession, which is in marked contrast to the relations existing in former times between the Supreme and the Provincial Governments under the centralised system of finance. In a few instances the Government of India, in view of its inability to concede all the assistance asked for, or to approve of the reduction of the balances to a sum lower than the amount settled in 1883, has found itself compelled, however reluctantly, to desire that the scale of expenditure should be reduced below the limits which in the opinion of the Local Government or Administration, although inconsistent with the maintenance of its balances, were advisable; or although not wholly refusing to contribute from our own resources to the urgent necessities placed before us, we have been unable to assent to the arguments presented for our consideration,—arguments having for their object such addition to the revenues placed at the disposal of the local authorities as must virtually have led to a revision of the terms of the contract into which, on behalf of their administration, they had entered. The considerations which I have exposed in the preceding pages will, I think, be held to have justified the rule of conduct adopted in these circumstances by the Government of India. They will show that if local authorities find themselves pressed occasionally to meet the expenditure which, in their reasonable desire for improvement, they consider essential, the Government of India has also burdens of its own to bear, which compel it to insist jealously on the maintenance of the relations into which it has entered with them, and which forbid it, even were such a course desirable, to entertain proposals having for their aim a review or revision of the arrangements completed in 1882-83. Nothing can be more true than what my predecessor in his Financial Statement for 1883-84 wrote—

"The contracts have not been made in any illiberal spirit. . . . . Under these circumstances the Provincial Government must look solely to the gradual development of their own resources, and to economy in their own administration, to provide whatever further funds may be required for services classed as Provincial. . . . It may be, and probably is, the case that in almost every Province of India the funds available are not commensurate with the work which sooner or later will require to be done. This is the normal condition of a country whose necessities are great, while the tax-paying power of its population is small. Under these circumstances, progress in many directions will possibly be comparatively slow; and it is inevitable, under all the conditions of Indian Government, that it should be slow. But what I particularly wish to point out is that the Government of India cannot at present make any further grants from Imperial funds in order to ensure more rapid progress. Indeed in some respects it may be said that the Provincial Governments are in a better position to provide whatever funds may be required than is the case with the

Imperial Government. For the reasons which I have already given an element of stability is imported into Provincial Finance which Imperial Finance cannot at present possess. Not only do the three* points to which I have alluded constitute dangers which are wholly borne by the Imperial Government of India—not only does the fourth danger (famine) materially affect Imperial as well as Provincial Finance, but if any further fiscal reforms are to be made—and there are several which it would be very desirable to make—any loss of money which may accrue from their execution must be borne by the Imperial Treasury.

78. In the economies which the Government of India is itself compelled to exercise will be found, in fact, the justification of its insistence on an economical administration elsewhere; while the uncertainty to which its own sources of supply are subject, no less than its liability to be called upon at one and the same time for increased expenditure in various different directions, compel it to entertain with the utmost reluctance proposals having for their object any further alienation, during the term of the contracts or afterwards, of however small a portion of its own revenues. In my opinion this necessity is not without its advantages; for so long as it may be hoped that the Government of India is in a position to offer further resources, the expectation that it will do so when a sufficient case is put before it, will continue to be entertained. Nothing is more likely to encourage a prudent and economical treatment of their finances by the Provincial Governments than a clear understanding, such as I have endeavoured to convey, as to the position of the central Government itself. As I have already indicated, these remarks, so far as they refer to applications for assistance, must not be held to have any general application to the provincial authorities viewed as a whole; for the Government of India has, on the contrary, just cause to be grateful to them for the judgment with which they have husbanded their resources, and the economy with which their affairs are conducted. Nor, even in the instances which I have more specially in mind in making these remarks, have I the desire to convey the idea that there has been, in the management of local finances, any but the most loyal wish to improve the position of the Province, or to make any criticism other than that this wish has in those cases led to an inclination to work on the lines of the contract with a degree of energy which was beyond the bounds of prudence. My object is rather to explain that, while I am aware that in one or two instances the revenues assigned to the local authorities may have been found to have been less favourable than in the majority of cases, this fact alone, when the circumstances of the Government of India itself are taken, as they must be, into consideration, is not sufficient ground to justify us in acceding to the grant of increased revenues, or in admitting further liability which in truth we are not in a position to assume. If there is one thing more important than another in the conduct of Indian finance, it is that the Government of India, which is always at the best surrounded by uncertainties, should at least have the certainty that for a term of years it has settled its relations with the Local Governments. That is the only condition on which it can with confidence examine its own position, and ascertain the adequacy or otherwise of the resources at its own disposal. This consideration (which I may take this opportunity of saying is, to my mind, all important) must especially be adopted as the guiding principle of our financial administration at a moment when the difficulties which I have been treating of are assuming greater proportions; and when a fall in the exchange, which a few years ago would have been looked upon as absolute ruin to our finances, and which, in truth, is a burden greater than they can continue to bear, is to be met and provided for, concurrently with a stagnation in trade, and the necessities imposed on us by the deliberate resolve to incur, for the protection of our people from famine, and for the greater security of our frontiers, very considerably increased expenditure.

The Government of India compelled to adhere strictly to the terms of the Provincial contracts.

* NOTE.—War—Opium—Exchange.

Decrease in Customs duties in 1885-86.

79. I pass now to the second of the three heads which I have indicated in paragraph 73, namely, the effect upon our estimates of the present stagnation in the rice trade. As I have already dwelt at some length on the prospect of this trade so far as they are at present known to me, I think it will be sufficient to give here a few figures which will show at a glance what is the sacrifice of revenue to which, until that trade returns, we must be content to submit. The receipts from our customs in the Budget Estimates, the Accounts, and the Revised Estimates of the years 1882-83, 1883-84, 1884-85, and 1885-86, have been severally as follows :—

	Budget Estimates.	Accounts.	Revised Estimates.
	£	£	£
1882-83 . . .	1,181,000	1,296,119	
1883-84 . . .	1,255,100	1,187,266	
1884-85 . . .	1,289,500	———	1,030,000
1885-86 . . .	1,175,000		

It will be seen from these figures that in the 1884-85 Revised Estimates there has been taken a figure lower by £151,500 than any hitherto shewn, whether in the Budget or in the Accounts; while, although in the estimate of the ensuing year we have thought ourselves justified in adding considerably to the Revised Estimates of 1884-85, believing the depression of the rice trade to be at its lowest, the figure we have taken is below any which, whether in the Budget or the Accounts of previous years, has hitherto been shewn.

80. I come now to the third of the four points indicated in paragraph 73 as constituting the main features of the coming year, namely *Exchange*. A glance at the following figures, which give the annual result of exchange in transactions with London during the years 1871-72 to 1883-84, with the Revised Estimate of 1884-85 and the estimates of 1885-86, will convey some notion of the burden imposed on our finances by this growing difficulty, and will show what a monstrous cautle exchange cuts out from the resources at our command.

Loss by exchange.

Year.	Loss by exchange.	Average rate of Secretary of State's Bills.
	£	s. d.
1871-72	428,920	1—11·12
1872-73	691,287	1—10·81
1873-74	879,411	1—10·35
1874-75	785,820	1—10·22
1875-76	1,355,861	1— 9·64
1876-77	2,059,311	1— 8·49
1877-78	1,554,922	1— 8·79
1878-79	3,225,831	1— 7·76
1879-80	2,926,403	1— 8·
1880-81	2,716,809	1— 7·95
1881-82	3,556,700	1— 7·89
1882-83	3,081,433	1— 7·52
1883-84	3,838,756	1— 7·54
1884-85 Revised Estimate	3,252,900	1— 7·3
1885-86 Budget ,, ...	3,573,600	1— 7·

81. It is explained, in the course of this Statement, why the loss by exchange in 1884-85 and again in 1885-86 is apparently less than in some of the previous years, namely, that the Secretary of State has been able to furnish himself with funds in England which assisted in keeping down the total amount of his bills. But for this, in the ensuing year 1885-86, we should have had to estimate for loss by exchange at a figure certainly not less than £4,000,000. Unless exchange improves during ensuing years, we must regard ourselves as liable to have to

make provision upon our Budgets for an item of little less than four millions in excess of that which at the commencement of the last decade we were called upon to meet. The highest point reached by the Secretary of State's bills and telegraphic transfers during 1884-85 has been 19·85 in May last, and the lowest 18·92 in February. I append a table shewing the bills drawn each month, with the concurrent produce in sterling, and the rate of exchange, as well as the amount drawn on telegraphic transfers, the sterling equivalent, and the rate at which they were obtained.

Result of Secretary of State's drawings during 1884-85.

	1884-85.					
	Bills.	Produce in sterling.	Rate of exchange.	Telegraphic Transfers.	Produce in sterling.	Rate of exchange.
	₹	£	d.	₹	£	d.
April	4,79,000	30,234	19·65	2,04,60,000	1,686,946	19·78
May	10,50,000	87,004	19·71	1,44,41,500	1,195,370	19·86
June	16,95,500	138,070	19·54	88,14,000	723,080	19·68
July	68,99,000	560,991	19·51	97,95,000	798,025	19·56
August	33,82,500	274,844	19·50	24,25,000	197,559	19·55
September	21,46,000	174,363	19·50	15,00,000	121,880	19·50
October	34,50,000	278,671	19·35	41,00,000	332,109	19·44
November	92,25,000	734,332	19·10	45,75,000	365,078	19·15
December	1,09,60,000	865,237	18·85	32,75,000	260,511	19·09
January	1,39,90,000	1,112,948	19·08	54,70,000	435,205	19·09
February	1,51,31,000	1,191,116	18·89	40,90,000	324,383	19·03
		(11 months.)				
TOTAL	6,83,78,000	5,456,816	19·15	7,89,45,500	6,440,754	19·58

Critical position of silver.

82. Since June last, when the rate began to decline, there has been no prospect of recovery. The time is probably approaching when this question of the fall in the value of silver will come more prominently before public attention. The policy of the President of the United States in favour of a temporary suspension of the coinage of silver has been unequivocably pronounced; and although there exists considerable doubt as to how far that policy will be endorsed by the American Legislature, the uncertainty which for the present must continue to hang over the question will maintain the depression of exchange. In the next place, the Conference of the Latin Convention is about to meet, and on the measures taken in consequence of the deliberations of the Conference, the immediate future of silver must greatly depend. Speculation on the subject in a Statement of this nature would be idle; but there seems no reason to hope that we have as yet seen the worst of our difficulties under the head of exchange; and if causes which are operating unfavourably to it, whether connected with trade or with the decision which may be taken by the Latin Convention or the American Legislature, are accentuated, it seems clear that the Government of India, unless it is able to obtain the attention of other Governments to its own views upon the question, may be called upon shortly to choose between deficit, or measures involving some degree of increase in taxation.

Grant from Revenues for railways.

83 The fourth and last item to which I have drawn attention in paragraph 73 is the grant of £500,000 for our railways, provided especially with a view to assistance in so much of our contemplated expenditure as is connected with the improvement of our frontier communications. It has always been hitherto the policy of the Government of India to meet demands of this nature, so far as they can be met, from its revenue: revenue failing, the Government of India is prepared to have recourse to borrowing. The remarks made by Sir John Strachey in paragraph 49 of his Financial Statement for 1880-81, express so entirely and succinctly my own opinion on this subject, that I may be allowed to quote them here. He says,—

"The reasons for which it is right to provide for the charges of the war out of current income apply equally, and indeed with greater force, to the charges for the frontier railways.

Although they will permanently benefit the country, it is plain that we could not construct them with borrowed money on the grounds on which we borrow for productive public works, and that their cost must be included among our ordinary charges. If, however, we could not have paid for them out of our ordinary revenue, it would have been quite right to borrow for their construction. I should have said this because the works are absolutely necessary, and because the political and financial evils of borrowing would be less serious than those involved by fresh taxation. I should not have defended borrowing for these railways on the ground that they will benefit posterity as well as the present generation. That is a matter about which I know nothing; but I know that posterity will have quite enough to do in bearing its own burdens."

Grants from Revenue for Harbour Defences.

84. The amount of the annual grant from revenue must in future obviously depend on the annual condition of our finances. All that I can say at present is that for my own part I am extremely desirous to devote as much as possible from revenue to the construction of railways, of which the portion which concerns our frontier communications must remain in great part unproductive. To the same class of grants belongs the item of £15,000, which we have devoted to the improvement of the defences of Aden; and a further item of £70,000 which we have placed at the disposal of the Military Department as a first instalment to be expended in the defence of our harbours. That we should have been able, in spite of the second and third of the four considerations which I have enumerated in paragraph 74, to make these additional grants, is evidence of the elastic nature of our revenues; but in view to all that has been said as to our financial prospects, I should be sorry to commit myself to an assurance that our revenues will continue to permit us to devote as much annually to the completion of the several works indicated, although no effort will be spared to enable this to be done. Meanwhile the following figures shew what has been the State or Guaranteed expenditure under the Revised Estimate in 1884-85, and what are our estimates for 1885-86. The Budget Estimate for 1884-85 was ₹6,59,19,000 only; being ₹73,44,100 less than the Revised Estimate of that year, which, again, is ₹1,96,87,100 in excess of the Revised Estimate of 1883-84. The difference between the Revised Estimates of 1883-84 and the Budget Estimate of 1885-86 is therefore no less than £2,701,100 conventional sterling.

Expenditure on Railways during 1884-85 and 1885-86 on State responsibility.

	Revised Estimate, 1884-85.	Budget Estimate, 1885-86.
(1) *Directly expended by Government—*	₹	₹
Charged to Loan	3,08,06,000	2,76,62,000
Ordinary State Railways	*8,05,000	†29,38,000
Charged to Protective Grant	89,81,000	50,00,000
East Indian Railway (excluding converted annuities)	29,50,000	34,00,000
Eastern Bengal Railway (excluding debentures)	9,30,000	28,00,000
Charged under Frontier Railways	13,87,000	50,00,000
TOTAL	4,58,59,000	4,68,00,000
(2) *Expenditure by Companies on the responsibility of Government—*		
Guaranteed Railways	1,31,11,000	1,73,19,000
Southern Mahratta Railway	1,19,87,600	1,64,68,000
TOTAL	2,50,98,600	3,37,87,000
GRAND TOTAL	7,09,57,600	8,05,87,000

* Excluding expenditure on Surveys and miscellaneous charges, amounting to ₹11,06,500.
† Ditto Ditto Ditto ₹10,42,000.

Explanation of details of difference between Revised Estimate, 1884-85, and Budget Estimate, 1885-86.

85. I think I have given now such a general view of the situation as it presents itself to us in making our estimates for the ensuing year, that it will be unnecessary to dwell further on the subject taken as a whole, and I may pass to the detailed explanations which it is usual to embody in the Budget Statement with regard to the increases and decreases under specific heads. I shall endeavour to make these as short as possible, and indeed, it seems to me that the custom of marshalling these figures in the body of this Statement, is one which, with exception, perhaps, as to figures treating of subjects of unusual interest, will in future be more honoured in the breach than in the observance. Where the amount of increase or decrease is less than £10,000, no explanation will be offered in the following remarks.

Principal Heads of Revenue.

86. *Land Revenue* (*I*); Increase, £787,900. Compared with the Revised, the Budget Estimate for 1885-86 shews an increase of £787,900, made up chiefly of £25,400 under British Burmah, £76,900 Punjab, £407,700 Madras, and £270,000 Bombay.

In the case of Burmah increased revenue is expected from capitation tax and from other miscellaneous sources. In the Punjab the increase is due to collection of revenue in suspense, and to revision of settlements. In Bombay and Madras the increase arises to a considerable extent from arrears of collections, suspended owing to the partial failure of crops in 1884-85.

87. *Opium* (*II*); Increase, £175,500; due to the expected recovery of our opium revenue from the depression of 1884-85. Of this net difference, an increase of £236,800 occurs under Bengal, and a decrease of £59,400 under Bombay. The number of chests to be sold in the calendar year 1885 is 49,992; due notice will be given of the amount which it is proposed to sell in the year 1886. The price taken for 1885-86 is rather less than 1,250 per chest, the average of the year 1884-85 having been 1,296. The Malwa opium scheme introduced, as explained in last year's Statement, by Mr. H. Rivett-Carnac, continues to work satisfactorily; 2,500 maunds at 90° consistence will be bought this year, against 2,268 in 1884-85.

88. *Salt* (*III*); Increase, £50,000.—The Budget for 1885-86 shews an improvement over the Revised of 1884-85 of £50,000. This difference is arrived at as shewn below:—

	Increase.	Decrease.
	£	£
Burmah	...	8,500
Bengal	...	30,000
Madras	88,500	...
	88,500	38,500
Net increase	50,000	

With regard to Burmah it is expected that the large stock that will be laid in, in 1884-85, will render replenishment on an extensive scale unnecessary in 1885-86, and that in that year local manufacture will remain stationary. Hence the reduction in revenue.

In the case of Bengal it is thought better not to place the Budget at as high a figure as the Revised Estimate.

With regard to Madras the larger estimate for 1885-86 is based principally on an anticipated increase of sales of East Coast salt, and on an anticipated increase of consumption generally.

89. *Stamps* (*IV*); Increase, £55,400. The increase occurs chiefly in Bengal and in the North-Western Provinces and Oudh. In Bengal it is due to an

expected increase in revenue resulting from the passing of the Bill for the registration of permanent tenures. In the North-Western Provinces and Oudh it is due to the transfer to this head from Land Revenue and Law and Justice of Revenue Record Fund and Criminal Record Fund receipts, which used to be received in cash, but which are now recovered in stamps. In the Punjab, allowance has been made for the further progress in revenue of which the actuals of past years justify the expectation in 1885-86.

90. *Excise* (*V*); Increase, £56,500. This occurs mainly in Madras, where it is anticipated that Toddy farms and Arrack farms in rented districts will yield an augmented revenue.

91. *Provincial Rates* (*VI*); Increase, £62,900.

In the Central Provinces an improvement of £6,800 is expected from the Patwari cess, being the result of administrative reforms that are in progress. In Assam the revenue will, it is anticipated, yield £13,000 more, because of the rates being doubled in Sylhet. Slight increases are also expected in districts where there are waste land grants.

In the North-Western Provinces, owing to a re-arrangement in the Village Watch circles, and to an increase in the number of watchmen in Oudh, higher revenue is expected in 1885-86. Madras and Bombay shew an improvement of £22,500 and £14,200, respectively. As these rates are raised from land, they are affected in the same way, and, generally, to the same extent, as receipts under Land Revenue. The remarks made under "I. Land Revenue" at paragraph 86 against Madras and Bombay apply also to the head Provincial rates.

92. *Customs* (*VII*); An improvement in trade is expected to yield an increase of £145,000, compared with the Revised Estimate. The Revised Estimate of 1884-85 was however taken at a figure considerably below the Budget of that year.

93. *Forest* (*IX*); Increase, £78,700. The increase may be ascribed generally to expected increased demand for timber, and to the development of timber operations.

Post Office, Telegraph, and Mint.

94. *Post Office* (*XII*); Increase, £41,300. This is due to an anticipated increase in the sale of ordinary postage stamps, and to an expected increase in receipts on account of Money Orders, the growth of the revenue under both heads justifying the advance in the estimates.

95. *Mint* (*XIV*); Decrease, £39,000. This is a very uncertain head, and difficult to estimate. A reduction of £39,000 is made because it is not considered safe to expect that silver to the same extent will be coined in 1885-86 as in 1884-85.

Receipts by Civil Departments.

96. *Law and Justice* (*XV*); Increase, £31,200. This head shews an improvement of £31,200 compared with the Revised. Nearly the whole of the increase occurs under Bengal and the North-Western Provinces and Oudh, where larger receipts are expected from sale of Jail manufactures and from the hire of convicts.

97. *Interest* (*XXI*); Decrease, £31,000. Of this £23,100 occurs in England and £7,900 in India. In 1884-85, owing to the favourable state of the money market, the loan of £3,000,000 required for the discharge of debentures in August was issued in England in May, and during the interval the available portion of the abnormally swollen cash balance was invested on terms which were at the time unusually favourable. For 1885-86 only normal receipts have been estimated for. The decrease in India occurs in interest on overdrawals of Railway capital.

98. *Receipts in aid of superannuations, &c.* (*XXII*). The increase is £51,000, and is almost entirely due to credits of subscriptions towards the Bengal

Civil Fund. No final arrangement for the taking over of this Fund has yet been made, but the question is being considered, and the contingency is provided for in the Estimates.

Miscellaneous.

99. *Miscellaneous (XXIV)*; Decrease, £48,900. This is an uncertain head, and one for which it is difficult to make an estimate a year in advance. In preparing the Revised Estimate of 1884-85 it was found that certain receipts which were expected to fall in would justify the Budget of that year being raised by £63,300. It is not considered safe at present, however, to put the Budget figure of 1885-86 at more than £14,400 above the Budget figure of 1884-85.

Revenue from Productive Public Works.

100. *State Railways (Gross Earnings) XXV.* The Budget Estimate of 1885-86 provides for an improvemet of £682,100 compared with the Revised Estimate of 1884-85. This improvement is in large part nominal, being indebted for £300,000 to the inclusion of the Sindh, Punjab, and Delhi under State Railways for the last quarter of the year. The main results are :—

	Increase.	Decrease.
	£	£
Rajputana-Malwa	172,500	...
Umeria Colliery	13,700	...
Nagpur and Chhattisgarh	10,000	...
Burma	60,000	...
Eastern Bengal	110,000	...
Tirhoot	12,000	...
Naraingunge-Dacca-Mymensingh	18,500	...
Cawnpore-Achneyra	25,000	...
Indus Valley	...	45,000
Sindh, Punjab, and Delhi	300,000	...

Rajputana-Malwa State Railway.—The Budget Estimate for 1885-86, £1,475,000, includes the estimated earnings of the Rewari-Ferozepore State Railway, hitherto shewn under the non-productive head of Account, XXIX. State Railways. The inclusion in the present estimate of the transactions of this line explains the large difference between the Revised Estimate for 1884-85 and Budget Estimate for 1885-86. A small improvement in the traffic has also been allowed for.

Umeria Colliery.—No provision was made in 1884-85. But it is expected that the colliery will earn £13,700 during 1885-86.

Nagpur and Chhattisgarh State Railway.—An increase of £12,500 is allowed for during 1885-86, owing to the better prospects of the grain traffic.

Burma State Railways.—The Budget Estimate for 1885-86 is placed at £60,000 higher than the Revised Estimate for 1884-85, owing to an additional length of 81 miles on the Sittang Railway expected to be opened for traffic on the 1st April next, as well as to provide for development of traffic generally.

Eastern Bengal State Railway.—An increase of £110,000 is provided for during 1885-86. A full year's earnings will accrue instead of the transactions of nine months only. The prospects of the traffic next year are good, and it is hoped that the estimate will be fully realised.

Tirhoot State Railway.—The Budget Estimate provides for an increase of £12,000 during 1885-86, which, it is believed, will be realised, as the Hajeepore extension will be opened for the whole twelve months, against five months in 1884-85. Moreover a further short length of line is likely to be opened during the year.

Naraingunge-Dacca-Mymensingh Railway.—An improvement of £18,500 is provided for during 1885-86 owing to an additional length of 75·62 miles expected to be opened about 1st August next.

Cawnpore-Achneyra State Railway.—The Budget Estimate for 1885-86 provides for an increase of £25,000. This will, in all probability, be realised, as in the previous year the Farakhabad-Hathras and Jumna Bridge sections were only opened from the 1st July 1884, or for nine months of the year only, while in 1885-86 a whole year's earnings of these sections are provided for.

Indus Valley State Railway.—The line altogether is doing remarkable well, and judging from present prospects, the Revised Estimate is placed at £705,000. This figure, it is believed, will be fully realized. It is not considered advisable, at present, owing to the uncertainty of the wheat traffic, to place the receipts of 1885-86 at a higher figure than £660,000.

Sindh, Punjab, and Delhi Railway.—The Budget Estimate for 1885-86 provides for the estimated earnings of the last quarter of that official year under *State Railways*.

East Indian Railway (gross earnings). The Budget Estimate for 1885-86 provides for an improvement of £280,000 on the Revised Estimates.* It is believed that to this extent trade will revive during next year. The estimate, it will be observed, is £300,000 less than the Budget Estimate of 1884-85.

101. *Guaranteed Railways (net traffic receipts) (XXVI).* This head shows a decrease of £14,000. Excluding the Eastern Bengal Railway, which became a State Railway from the 1st July 1884, and under which a net issue of £1,300 was provided in the Revised Estimate of 1884-85, the rest of the differences are given below :—

	Increase.	Decrease.
	£	£
Madras Railway	...	25,000
South Indian Railway	25,000	...
Bombay, Baroda, and Central India Railway .	30,000	...
Oudh and Rohilkhund Railway . . .	45,000	...
Sind, Punjab, and Delhi Railway . . .	...	70,000
Great Indian Peninsula Railway . . .	...	20,000

Madras Railway.—The Budget Estimate for 1885-86 is £25,000 worse than the Revised Estimate for 1884-85. The receipts during 1885-86 are entered at the same figure as the Revised Estimate. The expenses, however, are placed at £25,000 more than in the Revised Estimate.

South Indian Railway.—An improvement of £30,000 has been provided for in the Budget Estimate. The estimates for 1885-86 place the gross revenue at £20,000 more than the Revised Estimate which, there is every reason to believe, will be realised, as the traffic is steadily improving. Heavy expenditure in connection with the restoration of the bridges and works damaged by the floods of this year will have to be met in 1885-86.

Bombay, Baroda, and Central India Railway.—In the Budget Estimate for 1885-86, an increase of £30,000 is provided for, as compared with the Revised Estimate for 1884-85. This is due to the additional traffic expected.

Oudh and Rohilkhund Railway.—An improvement in the traffic may reasonably be looked for during 1885-86, and an additional length of line will, it is expected, be opened for traffic during the year. The Budget Estimate shews a net improvement of £45,000 compared with the Revised Estimate of 1884-85.

Sind, Punjab, and Delhi Railway.—The Budget Estimate provides for the transactions of the first nine months of the official year only, *viz.*, from 1st April to 31st December 1885. As the line will very probably be taken up by Government on the 1st January 1886, the transactions for the remainder of the year are allowed for under *State Railways*; and hence a decrease £70,000 compared with the Revised Estimate for 1884-85. The figures entered in the Budget are normal, and do not call for any special remark.

102. *Irrigation and Navigation* (*Direct Receipts*) (*XXXI*). The Budget Estimate for 1885-86 shews a decrease of £173,400 compared with the Revised Estimate for 1884-85 :—

	Increase.	Decrease.
	£	£
Punjab	...	13,100
Madras	300	...
Bombay	1,300	...
Bengal	...	...
North-Western Provinces and Oudh	...	161,900
Total	1,600	175,000
		173,400

The decrease in the Punjab is the net result of a reduction in the estimated receipts by Civil Officers on account of owner's rates on the Western Jumna Canal, counterbalanced to some extent by increase in revenue due to the opening of the Chenab Canal, and of increased irrigation and better rabbi crops expected from the operations of the Bari Doab and Sirhind Canals.

The small increase of £300 in Madras is due chiefly to the increased revenue expected from the Kurnool Canal.

The expected increase in Bombay is due chiefly to anticipated realisation of arrears of previous years on account of certain Canals; to expectation of a sufficient supply of water in the Hathmati Canal; and to extension as well as to the probable increase in the water-supply from the canal furnishing the town of Poona.

The decrease of £161,900 in the North-Western Provinces and Oudh is the result of the failure of the Nadrai Aqueduct, Lower Ganges Canal, as until such time as the new works are completed, only about half the required supply can be passed down from the head works at Narora.

103. *State Railways* (*XXIX*). The Budget Estimate for 1885-86 shews a decrease of £85,900 as compared with the Revised Estimate for 1884-85, and consists mainly of an item of £87,500, decrease in the Rewari-Ferozepore State Railway. No provision has been made in 1885-86 for this railway, because the estimated earnings of the line for that year are included in those of the Rajputana-Malwa State Railway, under "XXV. State Railways." *Public Works not classed as Productive.*

104. *Subsidised Railways* (*XXX*) Southern Mahratta Railway. The Budget Estimate for 1885-86 provides for an improvement of £67,500, because the line now open will be worked for 12 months, and an additional length of 103 miles will, it is expected, be opened early in April.

105. *Civil Buildings, Roads and Services* (*XXXIII*). The Budget Estimate for 1885-86 shews a decrease of £68,600. Nearly the whole of the decrease occurs under India, General, and under Bengal. In the case of the former the Revised Estimate of 1884-85 contains an abnormal receipt of £23,100 on account of arrears of previous year's contributions for roads in Scindia's territory realised in 1884-85. With regard to Bengal, where the decrease is £41,300, the Revised Estimate for 1884-85 provides for an abnormal receipt of £46,000 realised from the East Indian Railway Company on account of the value of Railway Offices in Fairlie Place, Calcutta. The remainder of the decrease in Bengal is due to an expected decline in ferry receipts.

106. *Interest on ordinary debt, 1885-86*; (1) Decrease, £388,200. This arises as follows :— **Expenditure.** *Interest*

	£
England	166,000
India	222,200
TOTAL	388,200

The saving in England would have been more but for a provision of £60,000 on account of interest on the loan to be raised in England in 1885-86. The decrease in England is accounted for by the absence of provision on account

of discount which had to be paid in 1884-85 on the three million 3 per cent. stock raised in that year. In 1885-86 £90,000 have been provided representing interest on the 3 per cent. India stock issued in 1884-85 and for which only £67,500 were provided in that year. On the other hand decreases occur under interest on Temporary Loans and Debentures, the former owing to repayment of the loan, and the latter to the conversion of the 4 per cent. Debentures, amounting to 5 millions, into 3½ per cent. Debentures.

The decrease in India amounts to £222,200, and is due principally to the transfer of capital from the ordinary to the productive portion of the Account, on account of the capital expenditure on State Railways and Irrigation.

107. *Interest on other obligations*; Decrease £63,400. Of this £62,600 occur in India and £800 in England. In India a saving £84,000 arises out of new arrangements with the Bengal Civil Fund, and an increased charge of over £20,000 for interest on Savings Bank Balances.

108. *Assignments and Compensations* (4); Increase, £16,400. This occurs principally in Bombay, where provision has been made for the award of compensation to be paid for the closing of salt works in Goa.

Direct demands on the Revenues.

109. *Opium* (6); Decrease, £468,300. The Revised Estimate for 1884-85 includes a provision of £593,600 in excess of the Original Estimate chiefly because of the exceptionally heavy outturn of the opium crop of 1883-84. The estimate of 1885-86 has been fixed for a smaller outturn.

110. *Salt* (7); Increase, £32,700. The increase occurs chiefly under India (General), and Bombay and is due to increased provision on account of establishments, salt purchase, and freight.

111. *Excise* (9); Increase, £20,100. The increase is general, but in Bengal an excess of £10,300 has been provided to give effect to the recommendations of the Excise Commission.

112. *Forest* (13); Increase, £28,100. The increase is general and occurs in all but the North-Western Provinces and Oudh, where there is a decrease of £21,900 on account of charges for the Collection of Timber.

Post Office, Telegraph, and Mint.

113. *Post Office* (15); Increase, £35,100. The increase occurs chiefly in the "conveyance of mails" and is partly due to larger provision on account of the pay of overseers, runners, &c., for the Road establishments.

114. *Telegraph* (16); Increase, £51,300. The increase occurs principally in England, £33,900. The increase is due to a larger amount of stores being necessary to meet the growing requirements of the Department.

Salaries and Expenses of Civil Departments.

115. *Law and Justice* (19); Increase, £145,600. The increase is general, and occurs in all the provinces of British India. The increase in Bengal amounts to £49,300, and is chiefly due to the appointment of three new Judges to the High Court and to expected increased outlay on raw material, &c., for Jail manufactures. The increase in the North-Western Provinces and Oudh, amounting to £22,100, is chiefly due to the formation of a separate office for the Legal Remembrancer; to the transfer of Distrainers (Kurk Amins) charges to this head from the head Personal Deposits; to the transfer of Criminal Court Record Fund Charges from 5 Land Revenue; and to full provision for Jail supplies and services, and for Jail manufactures. In the Punjab the increase is £33,600, and is provided to meet the salaries of the newly appointed Divisional and District Judges with their establishments, and to cover the higher rates of salary to Deputy and Assistant Commissioners under the re-organisation scheme of the Punjab Commission.

116. *Police* (20); Increase, £49,000. The increase is distributed over most of the Provinces. In the North-Western Provinces and Oudh, the increase amounts to £15,100, and is due chiefly to extra provision for Clothing and for Village Police.

117. *Marine* (21); Increase, £35,300. This arises chiefly under India, General, and is due to the addition of the *Canning* to the Marine establishment preparatory to its being fitted up as a troopship; to increased work in the

Bombay Dockyard, and repairs to the Hydraulic Lift preparatory to its being made over to a private Company.

118. *Education* (*22*); Increase £81,300. The increase is general, and is due to the spread of education. In the North-Western Provinces and Oudh an increase of £14,800 is provided to meet additional expenditure on Inspection, Normal and Local Schools, Grants-in-aid, &c. In Bombay the increase amounts to £35,000, and for the most part represents new grants to Primary Schools within municipal limits.

119. *Medical* (*24*); Increase £30,100. The increase is general, and is due to the growing requirements of the Department.

120 *Political* (*25*); Decrease £84,200. The decrease is chiefly due to a reduction of £60,000 in the provision for the Afghan Delimitation Commission, and to the absence of arrear payments on account of the Amir's subsidy.

121. *Scientific and other Minor Departments* (*26*); Increase, £45,500. The increase occurs chiefly under India (General), and Bombay. Under India (General) the increase amounts to £20,800, and is due to larger provision for survey charges. Under Bombay the increase of £10,500 is on account of the Indian and Colonial Exhibition of London and the Fine Arts Universal Exhibition of Antwerp.

Miscellaneous Civil Charges.

122. *Superannuations, Allowances and Pensions* (*29*); Increase £106,000. In India a decrease of £23,000 is expected. In England larger payments to the extent of £129,000 are anticipated on account of annuities due to Government taking over the Bengal Civil Fund in 1885-86.

123. *Miscellaneous* (*31*); Decrease £15,000. This occurs chiefly in India, (General) and is due mainly to the absence of provision for special payments made in 1884-85 on account of compensation for damage and detention of Petroleum in Calcutta.

Famine Relief and Insurance.

124. *Protective Works, Railways* (*33*); Decrease £398,100. The Revised Estimate for 1884-85 included £388,100 unappropriated in 1883-84 and re-allotted in 1884-85. No such re-allotment occurs in 1865-66, for which year only the fixed portion of the annual grant has been assigned.

125. *Reduction of Debt* (*35*). The increase of £360,400 is due to the reduction in the grant for Railways, which sets free a corresponding sum for reduction of debt.

Expenditure on Productive Public Works (Revenue Account).

126. *State Railways* (*Working Expenses*) (*36*); Increase £436,700. The increase is the result of a series of figures, of which the following are the principal items :—

	Increase.
	£
Rajputana-Malwa Railway	147,500
Burma Railway	38,000
Eastern Bengal Railway	52,500
Naraingunge-Dacca-Mymensing Railway	18,500
Cawnpore-Achneyra Railway	12,500
Sindh, Punjab, and Delhi Railway	180,000

Rajputana-Malwa Railway.—The increase is partly nominal, representing the expenses on account of the Rewari-Ferozepore line hitherto shewn under the non-productive head of account, *viz.*, 41. State Railways Revenue Account. An increase of £17,500 occurs on account of the surplus profits for the half-year ending 30th June 1885, payable to the Bombay, Baroda, and Central India Railway for the working of the line. The additional expenditure provided under this Railway will be set off to some extent by credits in the Civil Accounts under Superannuation Allowances and Pensions, Stationery and Printing, Miscellaneous and Police. The credits on these accounts are roughly estimated at £40,000.

Burma Railway.—The additional assignment is due to an additional mileage of 81 miles being expected to be opened on the Sittang Railway from 1st April 1885, and to an anticipated expansion of traffic.

The increase under *Eastern Bengal Railway* amounts to £52,500, and is due to the amalgamation with this line of the Calcutta and South-Eastern Railway and of the Poradaha-Damukdia section of the Northern Bengal State Railway. Increased provision has also been made for expenditure owing to larger estimated traffic.

Naraingunge-Dacca-Mymensing Railway.—An additional length of 75·62 miles is expected to be opened about 1st August next, and the increase in the Budget is to meet outlay on this extension.

Cawnpore-Achneyra Railway.—The increase provides for increased mileage; for sleeper renewals; and for improving the assignment of certain portions of the Cawnpore-Farakhabad section of the line.

Sindh, Punjab, and Delhi Railway.—This line will probably be taken over by Government on the 1st January 1886. The Budget Estimate for 1885-86 provides for the estimated expenses of the last quarter of that year.

East Indian Railway Working expenses.—Decrease, £64,800. The decrease is due to a reduction of expenditure on account of renewals, and to a falling off in the payment on account of surplus profits, due to the falling off in the revenue of the 2nd half of 1884 and the 1st half of 1885.

127. *Guaranteed Railways* (*Surplus profits, Land and Supervision*) (37); Increase, £20,900. The increase is brought about by the necessity for provision in Madras of £15,300 on account of land required for the Beypore-Calicut Extension.

128. *Irrigation and Navigation.*—Increase, £11,300. The increase is due to additional capital outlay on the several projects.

129. *Charges in respect of Capital* (*39*); (*a*) *Interest on Debt; State Railways;* Increase, £137,300. The increase is chiefly due to gradual increase in the capital expenditure on State Railways.

East Indian Railway.—Increase, £18,900. An increased provision is made to cover the charge on account of interest on India stock and interest on Capital, Capital advance, and Stores suspense accounts.

(*b*) *Annuities in purchase of Guaranteed Railways* (including Sinking Funds).—Increase, £96,700. The increase is due to a full year's provision having been made in 1885-86 on account of the annuity for the Eastern Bengal Railway, against provision in the Revised Budget of 1884-85 for only the payment of the proportion of the annuity due on the three months ending 31st October.

130. *State Railways, Capital Account* (*40*); Increase, £206,900. The increase is due to provision being made on account of the Lucknow-Sitapur-Kheri Line, the construction of which has been sanctioned by the Secretary of State.

Expenditure on Public Works not classed as Productive.

131. *State Railways* (*working and maintenance*) (*41*); Decrease, £56,000. The decrease is chiefly due to the expenses of the Rewari-Ferozepur Line having been transferred to 36. State Railways, and included under Rajputana-Malwa Railway.

132. *Subsidised Railways* (*42*); Decrease, £51,200. This is the net result of the following changes:—

	Increase.	Decrease.
	£	£
Guaranteed Interest	...	36,400
Subsidy	6,500	...
Payments for Land	...	21,300

Under guaranteed interest the decrease is due to the cessation of payments on this account to the Bengal Central Railway and to the Rohilkhund-Kumaon Railway from 1st January 1885. The increase under "Subsidy" represents the payments to the Rohilkhund-Kumaon Railway and to the Assam Railway. The decrease under payments for land is the amount by which the requirements under this head in 1885-86 are expected to fall short of the payments in 1884-85.

Southern Mahratta Railway.—Increase, £73,000. Of this £24,000 occurs in interest charges and £49,000 in working expenses. The former is due to additional provision being made to cover the interest on the additional capital raised by debentures, and the latter to provision being made for an additional length of 103 miles which it is expected will be opened for traffic early in April.

133. *Irrigation and Navigation* (*44*). The decrease amounts to £75,000, and occurs as follows:—

	£
Imperial	30,500
Provincial	45,600
	76,100
Local (increase)	1,100
Net decrease	75,000

The decrease is due to the Government of India not being able to provide a larger sum than £525,000 for total outlay in 1885-86, from imperial resources and to a heavy reduction in the grant for Provincial Public Works in Burma. There is an increase of £9,900 in Bengal, due chiefly to an increase of expenditure on the Orissa Coast Canal which is approaching completion.

134. *Military Works.*—Increase, £117,100. The Budget for 1885-86 provides (1) fixed annual grant of one crore of rupees; (2) one and half lakhs in addition for the Aden defences; (3) seven lakhs for Bombay Defences; and (4) the lapse of the current year's grant, ₹55,000.

135. *Civil Buildings, Roads, and Services* (*46*). This is a net increase of £47,500 due to the addition of £100,000 to the estimates, being the grant for frontier roads.

136. *Army* (*47*); Decrease, £204,800.

Army Services.

The net estimated cost of the army in India for the financial year 1885-86 (excluding war charges and receipts) is £14,881,000, or a little below £15,000,000, which may be considered to be about the normal military expenditure in India and in England. The above sum provides for the estimated cost of the British army serving in India, the sanctioned number at the present time being more nearly complete than it was at any time during the five years immediately preceding the Afghan War. Dealing alone with army expenditure in India, there is a net increase of £36,200, which is explained by the fact that under the grant for regimental pay, allowances, and charges there is an increase of £48,600, due to the rate of exchange for the pay of British troops in 1885-86 having been fixed at 1*s*. 7½*d*., the rate for 1884-85 being 1*s*. 8*d*. There is also a large increase in the purchase of country-brewed beer, which will be supplied to all but three stations in Bengal, and which is slowly superseding English beer in the Madras and Bombay presidencies. The increase is counterbalanced by a corresponding reduction in the Home charges. Under the head of "ordnance establishments, stores, and camp equipage" there is an increase of £22,115, consequent on the outturn of small-arms ammunition at the factories having to be largely increased to replace reserves which it was found necessary to condemn.

There is an increase of £36,169 "miscellaneous services," chiefly consequent on the provision of £20,000 for land required in connection with the new redoubts in course of construction at Lucknow. The grant for volunteers, consequent on the growth of the movement, and revised rates of pay for sergeant instructors, shows an increase of £13,975, while on the other hand there is a reduction under the head of commissariat establishments, supplies, and services of £28,532, which is due to favourable prices of supplies, and anticipated saving in railway and transport charges owing to reduced rates and a small relief. As regards the home charges, the gross estimate for 1885-86 is lower than that of any year since 1873-74. This is due partly to a reduction in the pension charges for British troops, and partly to reduced demands for stores. The charges for the Indian troop service are also very low. The estimated charge for stores is lower than it has been for nineteen years. The decrease is due partly to the economical administration of the several departments, and partly to the substitution of country products and manufactures and malt-liquor for stores hitherto imported from England. From both points of view the reduction is satisfactory.

Whatever may be the case in the future, at the close of 1884-85 the total net military charges in India and England were lower than they have been at any time during the past ten years, and this has been effected without prejudice to efficiency or any reduction in the authorised aggregate strength of the army, and notwithstanding that the non-effective and superannuation charges have in recent years largely increased. But for these and additional expenditure caused by changes of organisation in the British army the Government of India are in no way responsible. This fact, however, does not lessen the uncertainty which prevails with regard to what the demands on the above account may amount to, and they are, in consequence, a source of considerable anxiety to those who are responsible for army expenditure in India.

Cost of Indian troops employed in the expedition to Suakim

137. The Indian Government will continue to bear the ordinary charges of the troops who have been or who may be sent to the Suakim expedition. All extraordinary charges—all charges, that is to say, other than those which would have been, in ordinary course, incurred had these troops remained in India—will be defrayed by the English Government.

138. *Exchange on Transactions with London* (*49*). Compared with the Revised Estimate of 1884-85, the Budget Estimate of 1885-86 shews an increase of £320,700. The figures of both years are compared below. The entries with + against them represent Gain, and those with — represent Loss.

	Revised Estimates, 1884-85.	Budget Estimates, 1885-86.
	£	£
Secretary of State's Bills	—3,337,100	—3,624,700
Expedition to Suakim	—75,000	—118,800
Hong-Kong Bills	—50,600	—41,900
Guaranteed Railways	+150,200	+136,300
East Indian Railway	+98,100	+121,800
Rajputana-Malwa Railway	+16,800	+25,000
Southern Mahratta Railway	—136,700	—158,600
Military	+7,000	+13,900
Public Works and Civil	+74,400	+73,400
TOTAL	—3,252,900	—3,573,600

The Secretary of State's drawings have been fixed at £13,773,700 against £13,795,300 in the Revised, the rate of exchange adopted for 1885-86 being 1*s.* 7*d.* against 1*s.* 7·3*d.*, the rate taken in the Revised. The Secretary of State's

drawings have been taken at the figure quoted above on the assumption that £2,225,000 true sterling will be raised in England by way of loan, and that £481,200 (the equivalent of 60 lakhs of rupees at 1*s.* 7·25*d.* the rupee) will be recovered in England on account of sums advanced in India towards the expedition to Suakim.

Concluding remarks on estimates.

139. Having brought the analysis of the financial situation, such as it presents itself, and of the detailed figures explaining variations between the Revised Estimates and Budget Estimates for 1884-85 and the Revised Estimates for 1884-85 and Budget Estimates for 1885-86, to a close, it remains only briefly to sum up our situation. The remarks made in the Preliminary paragraph have been, I trust, sufficiently illustrated in the course of this Statement. The prospects of our revenues, the heavy demands which they have been called upon to bear, and the liabilities to which we may yet be exposed, require no further explanation. The year commences with a surplus which is more less considerable according as the grants for capital expenditure are included in or excluded from our calculations. If during the ensuing year we are not called upon to submit to any material increase of expenditure, the estimates, based as they are on a very low rate of exchange and a very moderate calculation as to the revival of our trade, may, I think, be trusted to bear the test of trial. Should trade revive or exchange become more favourable, we shall have resources ample to meet our estimated expenditure. On the other hand, it is impossible to say whether additional expenditure may not in the course of the year have to be provided for, exceeding the limits of any addition which our revenues may reasonably hope to derive from the strengthening of our railway receipts or from the improvement in our exchange. To put it in other words, heavily as we are weighted from the two causes above indicated, there is no reason why our resources should not fully suffice to meet all normal expenditure during 1885-86. But if abnormal expenditure, whether of a temporary or permanent kind, is forced upon us, our estimates, even should they be strengthened by a more favourable combination of exchange and trade, may very probably prove unequal to meet it. It is to be hoped that the financial prosperity, the good harvests, and the undisturbed peace, which have of late years been accorded to us will continue. But it is necessary to state clearly the position in which, owing to the concurrence of a variety of unfavourable conditions, we find ourselves placed, in order that considerations which inevitably presented themselves when the estimates were being framed may be fully explained to the public, and that we may not be charged, should difficulties increase upon us, with having taken too sanguine a view of our position.

Ways and Means.

140. In the Financial Statement for 1884-85 it was anticipated that the Secretary of State would draw during 1883-84 £17,800,000 true sterling; that the balance in Indian Treasuries on 31st March 1884 would be £12,440,000; that the Secretary of State would draw during 1884-85 £16,500,000 true sterling; that assistance must be obtained during the year to the extent of £2,500,000, either by loan raised in India or by reduction of the drawings of the Secretary of State; and that the year would close on 31st March 1885 with a balance in the Indian Treasury of £11,010,850.

The Secretary of State actually drew in 1883-84 £17,599,805 true sterling, and the year 1884-85 opened with a balance in Indian Treasuries of £13,199,926, being £759,926 in excess of the estimate.

No loan was raised in India during the year, and the Secretary of State reduced the estimated amount of his drawings, so that his total drawings for the year 1884-85 are now taken at £13,795,300 true sterling.

It is expected, if the Secretary of State should draw the amount he proposes to draw, that the year 1885-86 will open with a balance in Indian Treasuries of £11,920,000; that the Secretary of State will require during the year £16,804,900 true sterling; and that if he were to draw the whole amount from India during the year, the amount in the Indian Treasuries would require to be supplemented by a loan of £3,500,000 (350 Lakhs of Rupees). The amount available for reduction of debt under the grant for Famine Relief and Insurance in 1885-86 is, however, in round numbers £680,000, (68 Lakhs of Rupees) and it will obviously be best to take this amount to reduce borrowing, rather than in actual reduction of debt previously incurred. The total amount to be borrowed has for the purposes of the estimates been taken at 282 lakhs of rupees, equivalent to about £2,225,000 true sterling. The Government of India has urged on the Secretary of State the inexpediency of attempting to borrow 282 lakhs of rupees in India this year, and the Secretary of State has accepted this opinion and agreed to find the equivalent sum of £2,225,000 true sterling in England during 1885-86. But while the Government now announces its intention of borrowing in England, and of not borrowing in India this year, it must be distinctly understood that no pledge is given, and that the Government of India does not hold itself precluded by anything now said from borrowing, in case of necessity, in India, or partly in India and partly in England, whatever sums of money may hereafter be found necessary for the service of the year.

The total requirements of the Secretary of State in 1885-86 being £16,804,900 true sterling, and it being anticipated that of this amount £2,225,000 true sterling will be obtained by loan or otherwise in England, there will remain £14,579,900 true sterling to be remitted from India. Of this sum it is estimated that the Secretary of State will receive £806,200 true sterling on account of repayments by Home Government of advances made in 1884-85 and 1885-86 for the Suakim expedition, leaving £13,773,700 true sterling to be drawn by bills and telegraphic transfers during the year. The closing balance of the year in Indian Treasuries on 31st March 1886 is estimated at £10,204,526.

Summary.

141. The following is a summary of the chief points in the foregoing Statement:—

1. The Accounts of 1883-84 shew a surplus of £1,387,496. An analysis of the surplus shews it to be partly due to revenues collected in anticipation of the following year, 1884-85.

2. The Revised Estimate of 1884-85 shews a deficit of £716,200.

3. The causes of this deficit are, the stagnation of the export wheat and rice trade, the heavy expenditure connected with the extraordinary opium crop of 1883-84, the collection, in anticipation, of Land Revenue, above alluded to, the suspension of a considerable amount of Land Revenue in Bombay and Madras, until the year 1885-86, in consequence of the partial failure of the rains in the year 1883-84, and the grant of a considerable sum from revenue for capital expenditure on frontier Railways.

4. Statistics are given illustrating the great fall in exports in most of the Indian products during the year, and the abnormal expenditure on account of the opium crop.

5. The consumption of salt and progress of Savings Banks continue satisfactory, but Stock Notes shew no sign of improvement.

6. The net import of gold during 1883-84 was ₹5,46,33,156, being the largest import since the year 1869-70. In 10 months of 1884-85 the net import of gold has been ₹4,50,26,000.

7. The Revised Estimates of 1884-85 provided for drawings by the Secretary of State to the amount of £13,795,300, being £2,704,700 true sterling less than the Original Estimates of the year.

8. The surplus of 1885-86 is estimated at £508,100, but the estimates on which this surplus is framed include, on the one hand, a grant of £585,000 from Revenue for Capital Railway Expenditure and for Harbour Defences, and, on the other, they take credit for £585,000, being the nominal saving in exchange on estimated short drawings by the Secretary of State.

9. The net Opium Revenue for 1885-86 has been taken at £6,547,300.

10. The opium crop of 1885 promises well: the reserve on the 31st December 1884 was 2,296 chests. The probable reserve on December 31st, 1885, will be 18,297 chests.

11. Due notice will be given of the amount of opium to be sold during 1886.

12. In the Estimates of 1885-86 the rate of exchange has been taken at 1*s.* 7*d.*, and provision made for drawings by the Secretary of State to the amount of £13,773,700.

13. It is intended that the usual Public Works loan should be raised in England this year, but no pledge on the subject is given.

A. COLVIN.

March 17th, 1885.

APPENDIX I.

ACCOUNTS AND ESTIMATES.

Accounts	1883-84.
Revised Estimates . . .	1884-85.
Budget Estimates . . .	1885-86.

CONTENTS.

General Statement

Receipts.	For details, vide Abstract.	Accounts, 1883-84.	Budget Estimate, 1884-85.	Revised Estimate, 1884-85.	Budget Estimate, 1885-86.
		£	£	£	£
Revenue—					
Principal Heads of Revenue—					
Land Revenue	...	22,361,899	21,888,200	21,546,300	22,334,200
Opium	...	9,556,501	8,594,200	8,850,000	9,025,500
Salt	...	6,145,413	6,328,900	6,350,000	6,400,000
Stamps	...	3,513,201	3,533,000	3,578,000	3,633,400
Excise	...	3,836,961	3,796,900	4,013,500	4,070,000
Other Heads	A	6,623,716	6,562,800	6,294,000	6,580,800
TOTAL PRINCIPAL HEADS	A	52,037,691	50,704,000	50,631,800	52,043,900
Post Office, Telegraph, and Mint	,,	1,672,761	1,734,700	1,789,200	1,792,900
Receipts by Civil Departments	,,	1,427,729	1,465,600	1,402,100	1,426,300
Miscellaneous	,,	1,512,604	1,256,100	1,369,400	1,346,500
Revenue from Productive Public Works	,,	13,240,507	13,631,100	12,923,900	13,707,000
Receipts on account of Public Works not classed as Productive	,,	879,897	917,700	1,008,700	920,400
Receipts by Military Departments	,,	956,232	861,200	866,100	853,400
TOTAL REVENUE	...	71,727,421	70,560,400	69,991,200	72,090,400
Debt, Deposits, and Advances—					
Permanent Debt (net incurred)	C	3,062,953	2,221,100	1,155,400	2,205,000
Unfunded Debt (net incurred)	,,	352,480	763,800	855,000	648,400
Deposits and Advances	,,	...	376,200	725,300	236,100
Loans to Municipalities, Native States, &c. (net Recoveries)	,,	171,960	115,400	18,700	308,100
Capital of Guaranteed and Subsidized Companies (net Receipts)	,,	...	...	...	...
Remittances (net)	,,	10,120	...	301,100	170,300
Secretary of State's Bills drawn	,,	17,599,805	16,500,000	13,795,300	13,773,700
TOTAL RECEIPTS	...	92,924,739	90,536,900	86,836,000	89,432,000
Balance on April 1st—India	...	14,821,550	12,440,050	13,199,926	11,920,026
England	...	3,429,874	3,606,174	4,113,221	2,213,121
GRAND TOTAL	...	111,176,163	106,583,124	104,149,147	103,565,147

FORT WILLIAM,
DEPT. OF FINANCE AND COMMERCE;
The 17th March 1885.

E. W. KELLNER,
Deputy Comptroller General.

Accounts and Estimates.

Rio = £1

Disbursements.	For details, *vide* Abstract.	Accounts, 1883-84.	Budget Estimate, 1884-85.	Revised Estimate, 1884-85.	Budget Estimate, 1885-86.
		£	£	£	£
Expenditure—					
Interest	B	4,276,266	4,162,200	4,404,900	3,953,000
Direct demands on the Revenues	,,	8,482,613	9,016,600	9,571,100	9,311,500
Post Office, Telegraph, and Mint	,,	1,984,058	2,158,400	2,131,300	2,216,400
Salaries and Expenses of Civil Depts.	,,	11,250,038	11,426,100	11,472,400	11,778,200
Miscellaneous Civil Charges	,,	3,882,529	3,973,800	3,909,500	4,012,500
Famine Relief and Insurance	,,	1,500,000	1,750,000	1,500,000	1,500,000
Expenditure on Productive Public Works (Revenue Account)	,,	12,033,873	12,542,800	12,358,000	13,033,600
Expenditure on Public Works not classed as Productive	,,	6,580,721	6,089,000	6,569,700	7,193,300
Army Services	,,	16,975,750	16,098,600	15,970,200	15,734,400
Exchange on Transactions with London	,,	3,838,756	3,538,100	3,252,900	3,373,600
TOTAL	...	70,804,604	70,755,600	71,140,000	72,306,500
Add—Provincial Surpluses, that is, Allotments to Provincial Governments, unspent by them	End of B	123,501	120,100	119,200	28,900
Deduct—Provincial Deficits, that is, Portion of Provincial Expenditure defrayed from Provincial balances	,,	—588,180	—634,600	—551,800	—753,100
TOTAL EXPENDITURE CHARGED AGAINST REVENUE	...	70,339,925	70,241,100	70,707,400	71,582,300
Expenditure on Productive Public Works (Capital Account)	End of B	3,992,029	4,764,400	5,732,400	4,405,400
Debt, Deposits, and Advances—					
Permanent Debt (net discharged)	C	...	...	...	...
Unfunded Debt (not discharged)	,,	...	...	...	...
Deposits and Advances (net)	,,	690,233	...	...	...
Loans to Municipalities and Native States, &c. (net advanced)	,,	...	...	...	...
Capital of Guaranteed and Subsidized Companies (net withdrawals)	,,	843,589	1,753,000	552,700	903,100
Remittances (net)	,,	...	251,500	...	...
Secretary of State's Bills paid	...	17,997,240	16,500,000	13,023,500	13,773,700
TOTAL DISBURSEMENTS	...	93,863,016	93,510,000	90,016,000	90,664,500
Balances on March 31st—India	...	13,199,926	11,010,850	11,920,026	10,204,526
England	...	4,113,221	2,062,274	2,213,121	2,696,121
GRAND TOTAL	...	111,176,163	106,583,124	104,149,147	103,565,147
Revenue		71,727,421	70,560,400	69,991,200	72,090,400
Expenditure chargeable thereon		70,339,925	70,241,100	70,707,400	71,582,300
Surplus (+) or Deficit (—)		+1,387,496	+319,300	—716,200	+508,100

J. WESTLAND,
Comptroller and Auditor General.

D. BARBOUR,
Secretary to the Government of India.

Abstract A.—*Details*

The figures in thick type are those which

	ACCOUNTS, 1883-84.				REVISED
	IMPERIAL.		PROVINCIAL AND LOCAL.	TOTAL.	IMPE
	England.	India.	India.		England.
Principal Heads of Revenue—	£	£	£	£	£
I.—Land Revenue	...	14,424,845	7,937,054	22,361,899	...
II.—Opium	...	9,556,501	...	9,556,501	...
III.—Salt	...	6,118,285	27,128	6,145,413	...
IV.—Stamps	...	1,771,495	1,741,706	3,513,201	...
V.—Excise	...	1,930,636	1,906,325	3,836,961	...
VI.—Provincial Rates	...	553	2,878,178	2,878,731	...
VII.—Customs	...	1,023,857	163,409	1,187,266	...
VIII.—Assessed Taxes	...	263,045	263,042	526,087	...
IX.—Forest	3,109	481,986	567,095	1,052,190	2,800
X.—Registration	...	129,942	129,013	258,955	...
XI.—Tributes from Native States	...	720,487		720,487	...
TOTAL	3,109	36,421,632	15,612,950	52,037,691	2,800
Post Office, Telegraph, and Mint—					
XII.—Post Office	...	1,014,199	4,544	1,018,743	...
XIII.—Telegraph	51,424	470,793	353	522,570	34,200
XIV.—Mint	35	131,413	...	131,448	...
TOTAL	51,459	1,616,405	4,897	1,672,761	34,200
Receipts by Civil Departments—					
XV.—Law and Justice	...	46,837	527,022	573,859	...
XVI.—Police	...	346	311,528	311,874	...
XVII.—Marine	...	75,982	116,885	192,867	...
XVIII.—Education	...	1,229	203,198	204,427	...
XIX.—Medical	2,413	2	52,556	54,971	2,300
XX.—Scientific and other Minor Departments	1,038	18,374	70,119	89,731	600
TOTAL	3,451	142,970	1,281,308	1,427,729	2,900
Miscellaneous—					
XXI.—Interest	29,722	784,680	35,061	849,463	33,100
XXII.—Receipts in aid of Superannuations, &c.	101,255	172,545	28,637	302,437	97,800
XXIII.—Stationery and Printing	...	7,264	43,331	50,595	...
XXIV.—Miscellaneous	4,881	42,553	262,675	310,109	8,000
TOTAL	135,858	1,007,042	369,704	1,512,604	138,900
Revenue from Productive Public Works—					
XXV.—State Railways (gross earnings)	...	2,325,422	756,826	3,082,248	...
East Indian Railway (gross earnings)	230	4,999,179	...	4,999,409	200
Eastern Bengal (gross earnings)	...	...	...	...	...
XXVI.—Guaranteed Railways (net Traffic Receipts)	...	3,688,143	...	3,688,143	...
XXVII.—Irrigation and Navigation (Direct Receipts)	...	284,634	651,947	936,581	...
XXVIII.—Portion of Land Revenue due to Irrigation	...	534,126	...	534,126	...
TOTAL	230	11,831,504	1,408,773	13,240,507	200
Receipts on account of Public Works not classed as Productive—					
XXIX.—State Railways	...	172,899	14,079	186,978	...
XXX.—Subsidized Railways	2,645	...	...	2,645	500
Southern Mahratta	...	77	...	77	...
XXXI.—Irrigation and Navigation	...	30,886	110,986	141,872	...
XXXII.—Military Works	...	44,062	...	44,062	...
XXXIII.—Civil Buildings, Roads, and Services	16,575	7,044	480,644	504,263	18,300
TOTAL	19,220	254,968	605,709	879,897	18,800
Receipts by Military Departments—					
XXXIV.—Army	52,458	900,066	...	952,524	69,700
XXXV.—Military Operations in Egypt	...	3,708	...	3,708	...
TOTAL	52,458	903,774	...	956,232	69,700
Total Revenues	265,785	52,178,295	19,283,341	71,727,421	267,500
		52,444,080			

... Revenue.

...pear in the General Account.

Rio = £1

...IMATE, 1884-85.			Increase + Decrease — of Revised as compared with Budget Estimates, 1884-85.	BUDGET ESTIMATE, 1885-86.				Increase + Decrease — of Budget, 1885-86, as compared with Revised Estimates, 1884-85.
...L.	Provincial and Local.	Total.		Imperial.		Provincial and Local.	Total.	
India.	India.			England.	India.	India.		
£	£	£	£	£	£	£	£	£
...,200	8,545,100	21,546,300	—341,900	...	13,493,800	8,840,400	22,334,200	+787,900
...,000	...	8,850,000	+255,800	...	9,025,500	...	9,025,500	+175,500
...,300	30,700	6,350,000	+21,100	...	6,367,200	32,800	6,400,000	+50,000
...,700	1,770,300	3,578,000	+45,000	...	1,835,100	1,798,300	3,633,400	+55,400
...,100	1,981,400	4,013,500	+210,600	...	2,060,100	2,009,900	4,070,000	+56,500
2,100	2,791,800	2,793,900	+53,600	...	2,200	2,854,600	2,856,800	+62,900
805,700	134,300	1,030,000	—259,500	...	996,800	178,200	1,175,000	+145,000
255,900	255,900	511,800	—6,300	...	257,400	257,500	514,900	+3,100
439,700	539,800	982,300	—71,100	900	475,300	584,800	1,061,000	+78,700
141,200	139,600	280,800	+15,200	...	141,600	140,200	281,800	+1,000
695,200	...	695,200	—700	...	691,300	...	691,300	—3,900
...,440,100	16,188,900	50,631,800	—72,200	900	35,346,300	16,696,700	52,043,900	+1,412,100
...,056,200	4,200	1,060,400	+1,400	...	1,097,700	4,000	1,101,700	+41,300
530,300	300	564,800	—8,700	26,100	539,700	400	566,200	+1,400
104,000	...	164,000	+61,800	...	125,000	...	125,000	—39,000
...,750,500	4,500	1,789,200	+54,500	26,100	1,762,400	4,400	1,792,900	+3,700
36,100	528,000	564,100	—53,800	...	42,800	552,500	595,300	+31,200
4,300	311,700	316,000	+7,200	...	7,800	303,800	311,600	—4,400
65,400	112,500	177,900	—28,000	...	60,700	115,700	176,400	—1,500
1,200	199,300	200,500	+1,800	...	1,100	200,700	201,800	+1,300
100	52,900	55,300	+7,200	2,000	100	52,500	54,600	—700
22,200	65,500	88,300	+12,100	500	20,300	65,800	86,600	—1,700
129,300	1,269,900	1,402,100	—53,500	2,500	132,800	1,291,000	1,426,300	+24,200
657,700	29,600	700,400	+47,300	10,000	627,700	31,700	669,400	—31,000
177,900	25,600	301,300	+7,600	94,600	232,000	25,700	352,300	+51,000	
9,100	39,000	48,100	—4,900	...	13,500	40,600	54,100	+6,000
64,000	247,600	319,600	+63,300	3,000	38,800	228,900	270,700	—48,900
888,700	341,800	1,369,400	+113,300	107,600	912,000	326,900	1,346,500	—22,900
394,800	874,800	3,269,600	—17,300	...	2,841,700	1,000,000	3,841,700	+572,100
670,000	...	4,270,200	—580,000	200	4,550,000	...	4,550,200	+280,000
440,000	...	440,000	+10,000	...	550,000	...	550,000	+110,000
374,000	...	3,374,000	—239,000	...	3,360,000	...	3,360,000	—14,000
...,100	734,000	1,048,100	+105,500	...	302,600	572,100	874,700	—173,400
522,000	...	522,000	+13,600	...	530,400	...	530,400	+8,400
814,900	1,608,800	12,023,900	—707,200	200	12,134,700	1,572,100	13,707,000	+783,100
218,200	16,100	234,300	+38,200	...	127,900	20,500	148,400	—85,900
...	...	500	+500	...	...	...	...	—500
32,500	...	32,500	+32,500	...	100,000	...	100,000	+67,500
28,700	108,800	137,500	—3,200	...	29,900	105,500	135,400	—2,100
39,500	...	39,500	+1,800	...	40,800	...	40,800	+1,300
39,500	515,600	564,400	+21,200	21,200	7,700	466,900	495,800	—68,600
749,400	640,500	1,008,700	+91,000	21,200	306,300	592,900	920,400	—88,300
861,400	...	866,100	+4,900	39,400	814,000	...	853,400	—12,700
861,400		866,100	+4,900	39,400	814,000	...	853,400	—12,700
69,300	20,054,400	69,991,200	—569,200	197,900	51,408,500	20,484,000	72,090,400	+2,099,200
706,800					51,606,400			

Abstract B.—*Detail*

The figures in thick type are those w

	ACCOUNTS, 1883-84.				REVIS
	Imperial.		Provincial and Local.	Total.	
	England.	India.	India.		Englan
Interest—	£	£	£	£	£
1.—Interest on Ordinary Debt (excluding that charged to Productive Public Works)	2,442,210	1,376,821	...	3,819,031	2,610,1
2.—Interest on other obligations	5,123	447,354	4,758	457,235	3
TOTAL	2,447,333	1,824,175	4,758	4,276,266	2,613,2
Direct Demands on the Revenues—					
3.—Refunds and Drawbacks	...	150,949	237,321	388,270	...
4.—Assignments and Compensations	...	543,467	695,373	1,238,840	..
Charges in respect of Collection, *viz.*:—					
5.—Land Revenue	260	281,769	3,047,118	3,329,147	4
6.—Opium (including cost of Production)	1,280	1,853,410	...	1,854,690	3,5
7.—Salt (including cost of Production)	4,085	377,995	64,561	446,641	...
8.—Stamps	27,815	24,146	57,133	109,094	45,1
9.—Excise	...	46,030	46,329	92,359	1
10.—Provincial Rates	...	...	54,547	54,547	...
11.—Customs	...	...	139,345	139,345	...
12.—Assessed Taxes	...	6,607	6,607	13,214	...
13.—Forest	5,864	291,325	352,186	649,375	4,1
14.—Registration	...	83,760	83,331	167,091	...
TOTAL	39,304	3,659,458	4,783,851	8,482,613	53,2
Post Office, Telegraph, and Mint—					
15.—Post Office	106,487	1,024,491	103,503	1,234,481	118,1
16.—Telegraph	156,277	507,203	5,759	669,239	198,2
17.—Mint	4,428	75,910	...	80,338	10,1
TOTAL	267,192	1,607,604	109,262	1,984,058	326,3
Salaries and Expenses of Civil Departments—					
18.—General Administration	239,354	582,823	776,202	1,598,379	236,5
19.—Law and Justice	374	159,735	3,078,702	3,238,811	1,2
20.—Police	...	68,901	2,692,153	2,761,054	...
21.—Marine (including River Navigation)	196,787	246,934	145,847	589,568	150,4
22.—Education	145	11,487	1,172,562	1,184,194	3
23.—Ecclesiastical	310	158,802	—	159,112	5
24.—Medical	7,472	17,150	692,203	716,825	8,1
25.—Political	26,041	505,971	653	532,665	32,4
26.—Scientific and other Minor Departments	20,896	248,813	199,721	469,430	15,5
TOTAL	491,379	2,000,616	8,758,043	11,250,038	445,4
Miscellaneous Civil Charges—					
27.—Territorial and Political Pensions	79,776	670,476	—	750,252	28,0
28.—Civil Furlough and Absentee Allowances	216,916	3,431	—	220,347	200,0
29.—Superannuation Allowances and Pensions	1,416,978	212,325	526,975	2,156,278	1,420,0
30.—Stationery and Printing	112,518	6,907	366,232	485,657	133,7
31.—Miscellaneous	20,123	35,078	214,794	269,995	25,9
TOTAL	1,846,311	928,217	1,108,001	3,882,529	1,807,6
Famine Relief and Insurance—					
32.—Famine Relief	89	1,485	7,611	9,185	...
33.—Protective Works, Railways	...	626,461	—	626,461	...
34.—Protective Works, Irrigation	26	283,191	—	283,217	...
35.—Reduction of Debt	...	581,137	—	581,137	...
TOTAL	115	1,492,274	7,611	1,500,000	...
Expenditure on Productive P. W. (Revenue Account)—					
36.—State Railways (Working Expenses)	...	1,261,037	444,618	1,705,655	...
East Indian Railway (Working expenses)	...	1,996,842	—	1,996,842	...
Eastern Bengal Railway (ditto)	...	—	—	—	—
37.—Guaranteed Railways (Surplus Profits, Land, and Supervision)	...	637,272	—	637,272	...
38.—Irrign. and Navign. (Working expenses)	43	213,482	301,312	514,837	...
39.—Charges in respect of Capital					
(*a*) Interest on Debt—					
State Railways	...	1,027,074	302,697	1,329,771	...
East Indian Railway	311,593	191,580	—	503,173	326,8
Eastern Bengal Railway	...	1,119	—	1,119	26,2
Irrigation and Navigation	...	382,143	463,181	845,324	...
(*b*) Annuities in purchase of Guaranteed Railways (including Sinking Funds)	1,203,118	—	—	1,203,118	1,220,0
(*c*) Guaranteed Railways Interest	3,284,241	12,521	—	3,296,762	3,217,5
TOTAL	4,798,995	5,723,070	1,511,808	12,033,873	4,791,2
Carried over	9,890,629	17,235,414	16,283,334	43,409,377	10,037,4

Expenditure.

...er in the General Account.

₹10 = £1

...IMATE, 1884-85.			Increase + Decrease — of Revised as compared with Budget Estimates, 1884-85.	BUDGET ESTIMATE, 1885-86.				Increase + Decrease — of Budget, 1885-86, as compared with Revised Estimates, 1884-85.
	Provincial and Local.	Total.		Imperial.		Provincial and Local.	Total.	
...India.	India.			England.	India.	India.		
£	£	£	£	£	£	£	£	£
...27,800	...	3,927,900	+241,100	2,444,100	1,095,600	...	3,539,700	—388,200
...70,800	3,100	477,000	+1,600	2,300	408,000	3,000	413,300	—63,700
...98,600	3,100	4,404,900	+242,700	2,446,400	1,503,600	3,000	3,953,000	—451,900
...33,400	80,500	213,900	—6,500	...	145,500	78,900	224,400	+10,500
...45,400	686,700	1,232,100	—8,000	...	564,300	684,200	1,248,500	+16,400
...34,500	3,051,700	3,346,600	+5,900	500	299,100	3,144,700	3,444,300	+97,700
...43,000		2,946,500	+593,600	4,500	2,473,700		2,478,200	—468,300
...93,600	76,000	459,600	—62,100		398,400	93,900	492,300	+32,700
...41,800	59,500	129,400	—300	44,700	24,200	60,600	120,500	+100
...31,600	51,700	103,400	+4,800	...	61,800	61,700	123,500	+20,100
—	111,400	111,400	+58,400	...	...	113,500	113,500	+2,100
—	136,800	136,800	—5,200	...	...	133,200	133,200	—3,600
...6,400	6,800	13,200	—600	...	6,500	6,900	13,400	+200
...20,700	390,700	701,500	—25,700	4,300	316,900	408,400	729,600	+28,100
...86,700	88,000	176,700	+200	...	90,900	90,200	181,100	+4,400
...8,100	4,739,800	9,571,100	+554,500	54,000	4,381,300	4,876,200	9,311,500	—259,600
...21,000	105,300	1,254,400	+6,900	127,300	1,054,300	107,000	1,288,600	+34,200
...7,800	700	788,700	—33,500	232,100	607,300	600	840,000	+51,300
...3,100	...	88,200	—500	10,300	77,500	...	87,800	—400
...1,900	106,000	2,131,300	—27,100	369,700	1,739,100	107,600	2,216,400	+85,100
...34,900	743,900	1,575,300	—1,200	237,100	601,000	734,700	1,572,800	—2,500
...35,000	3,128,000	3,294,200	—84,900	2,300	167,100	3,270,400	3,439,800	+145,600
...81,500	2,725,300	2,805,800	+11,900	...	85,500	2,770,200	2,855,700	+49,900
...2,700	143,300	487,900	—29,700	157,400	225,600	140,200	523,200	+35,300
...34,400	1,194,600	1,210,800	—26,400	200	14,900	1,277,000	1,292,100	+81,300
...4,700	...	165,200	—2,200	300	169,700	...	170,000	+4,800
...35,000	714,800	737,900	+7,400	7,600	16,400	744,000	768,000	+30,100
...46,300	600	743,300	+167,800	29,300	629,200	600	659,100	—84,200
...13,000	183,500	452,000	+3,600	19,600	269,600	208,300	497,500	+45,500
...35,000	8,834,000	11,472,400	+46,300	453,800	2,179,000	9,145,400	11,778,200	+305,800
...1,100	...	680,000	—26,600	21,300	654,900	...	676,200	—3,800
...5,700	...	215,700	—5,200	220,000	5,200	...	225,200	+9,500
...2,500	553,900	2,206,400	+500	1,549,000	192,700	570,700	2,312,400	+106,000	
...3,100	375,100	502,700	—37,100	135,000	—9,900	383,900	509,000	+6,300
...[illegible]	193,800	304,700	+4,100	20,000	67,500	196,200	289,700	—15,000
...30	1,122,800	3,909,500	—64,300	1,951,300	910,400	1,150,800	4,012,500	+103,000
...[illegible]	12,000	12,000	+12,000	...	...	33,000	33,000	+21,000
...[illegible]00	...	898,100	—240,500	...	500,000	...	500,000	—398,100
...[illegible]00	...	270,600	—39,500	...	287,300	...	287,300	+16,700
...[illegible]00	...	319,300	+18,000	...	679,700	...	679,700	+360,400
...[illegible]00	12,000	1,500,000	—250,000	...	1,467,000	33,000	1,500,000	...
...[illegible]00	599,300	1,886,300	+53,600	...	1,629,900	640,600	2,270,500	+384,200
...[illegible]00	...	1,891,300	—161,200	...	1,826,500	...	1,826,500	—64,800
...[illegible]00	...	180,000	—20,000	...	232,500		232,500	+52,500
...[illegible]00	...	495,100	—34,900	...	516,000	...	516,000	+20,900
...[illegible]00	343,900	581,800	+19,700	...	251,100	342,000	593,100	+11,300
...[illegible]00	339,600	1,409,400	—16,100	...	1,145,400	369,900	1,515,300	+105,900
...[illegible]00	...	531,800	+700	330,700	220,000	...	550,700	+18,900
...[illegible]00	...	64,100	+30,400	33,200	62,300	...	95,500	+31,400
...[illegible]00	470,900	875,200	—4,600	...	426,000	480,800	906,800	+31,600
...[illegible]00	...	1,220,600	—34,500	1,317,300	...	...	1,317,300	+96,700
...[illegible]00	...	3,222,400	—17,900	3,205,000	4,400	...	3,209,400	—13,000
...[illegible]00	1,753,700	12,358,000	—184,800	4,886,200	6,314,100	1,833,300	13,033,600	+675,600
...[illegible]00	16,571,400	45,347,200	+317,300	10,161,400	18,494,500	17,149,300	45,805,200	+458,000

Abstract B.—*Deta*

	ACCOUNTS, 1883-84.				REV
	IMPERIAL.		PROVINCIAL AND LOCAL	TOTAL.	
	England.	India.	India.		Engl
	£	£	£	£	£
Brought forward .	9,890,629	17,235,414	16,283,334	43,409,377	10,037,
Expenditure on Public Works not classed as Productive—					
40.—State Railways (Capital Account) . .	...	79,040	—473,367	—394,327	...
41.—State Railways (Working and Maintenance)	...	147,626	10,075	157,701	...
42.—Subsidised Railways	27,801	47,616	6,957	82,374	36,
Southern Mahratta Railway . . .	...	85,568	...	85,568	...
43.—Frontier Railways	97	102,832	...	102,929	138,
44.—Irrigation and Navigation	1,591	513,861	235,452	750,904	
45.—Military Works	5,825	1,012,303	...	1,018,128	3,
46.—Civil Buildings, Roads, and Services . .	86,515	1,005,360	3,685,569	4,777,444	67,
TOTAL .	121,829	2,994,206	3,464,686	6,580,721	246,
Army Services—					
47.—Army	5,017,422	11,904,292	...	16,921,714	3,975,
48.—Military Operations in Egypt . . .	6,162	47,874	...	54,036	...
TOTAL .	5,023,584	11,952,166	...	16,975,750	3,975,
49.—Exchange on Transactions with London .	...	3,838,756	...	3,838,756	...
TOTAL .	15,036,042	36,020,542	19,748,020	70,804,604	14,258,
	51,056,584				
Surpluses	+1,387,496		+123,501	...	...
Deficits	...		—588,180	...	...
TOTAL AS PER ABSTRACT A .	52,444,080		19,283,341	...	...
Expenditure on Productive Public Works (Capital Account)—					
50.—State Railways	769,728	2,233,343	...	3,003,071	901,
East Indian Railway	510,319	233,298	...	743,617	324,
Eastern Bengal Railway	55,942	...	...	55,942	1,001,
51.—Irrigation and Navigation	8,573	701,111	...	709,684	5,
Madras Irrigation and Canal Company's undertakings	12,785	...	...	12,785	...
52.—Miscellaneous Public Improvements . .	...	—533,070	...	—533,070	...
TOTAL .	1,357,347	2,634,682	...	3,992,029	2,235,

f Expenditure—continued.

Rio=£1

STIMATE, 1884-85.			Increase + Decrease — of Revised as compared with Budget Estimates, 1884-85.	BUDGET ESTIMATE, 1885-86.				Increase + Decrease — of Budget, 1885-86, as compared with Revised Estimates, 1884-85.
	PROVINCIAL AND LOCAL.	TOTAL.		IMPERIAL.		PROVINCIAL AND LOCAL.	TOTAL	
India.	India.			England.	India.	India.		
£	£	£	£	£	£	£	£	£
8,738,800	16,571,400	45,347,200	+317,300	10,161,400	18,494,500	17,149,300	45,805,200	+458,000
93,500	97,600	191,100	+24,400	...	86,400	311,600	398,000	+206,900
163,200	12,700	175,900	—800	...	104,900	15,000	119,900	-56,000
40,700	13,900	91,000	+2,600	...	27,500	12,300	39,800	-51,200
148,300	...	148,300	+58,800	141,000	80,300	..	221,300	+73,000
...	...	138,700	+211,700	400,000	100,000	...	500,000	+361,300
555,300	226,800	782,300	+29,900	1,200	523,800	182,300	707,300	-75,000
969,600	...	973,400	+50,400	2,200	1,088 300	..	1,090.500	+117,100
437,100	3,564,600	4,009,000	+103,700	75,900	502,900	3,537,700	4,116,500	+47,500
2,407,700	3,915,600	6,569,700	+480,700	620,300	2,514.100	4,058,900	7,193,300	+623,600
15,995,200	...	15,970,200	—128,400	3,572,900	12,161,500	...	15,734,400	—235,800
...	...	...	...	...	...	...	...	...
15,995,200	...	15,970,200	-128,400	3,572,900	12,161,500	...	15,734,400	-235,800
3,252,900	...	3,252,900	-285,200	...	3,573,600	...	3,573,600	+320,700
70,394,600	20,487,000	71,140,000	+384,400	14,354,600	36,743,700	21,208,200	72,306,500	+1,166,500
50,953,000				51,098,300				
...	+119,200			+508,100		+28,900		
-716,200	-551,800			...		-753,100		
49,936,800	20,054,400			51,606,400		20,484,000		
2,179,300	...	3,080,600	—195,000	862,100	1,900,600	...	2,762,700	-317,900
295,000	...	619,000	+79,000	...	340,000	...	340,000	-279,000
270,000	...	1,271,200	+1,271,200	350,900	132,100	...	483,000	—788,200
756,600	..	761,600	-187,200	6,000	813,700	...	819,700	+58,100
...	...	...	...	...	...	...	...	...
...	...	...	...	...	...	...	...	...
3,500,900	...	5,732,400	+968,000	1,219,000	3,186,400	...	4,405,400	-1,327,000

Abstract C.—*Details of Receipts and Disbursement*

The figures in thick type are th

	Accounts, 1883-84.			Revised Estimate, 1884-85.			Budget Estimate, 885-86.		
	England.	India.	Total.	England.	India.	Total.	England.	India.	Total.
	£	£	£	£	£	£	£	£	£
Revenue (from Abstract A)	265,785	71,461,636	71,727,421	267,500	69,723,700	69,991,200	197,900	71,892,500	72,090,400
Permanent Debt incurred—									
Sterling Debt—									
(a) E. I. R. and E. B. R. Debt—									
3½ p. c. Redemption Stock	591,001	...		144,800	...		...	...	
3 p. c. Redemption Stock	...	...		222,000	...		...	...	
Debenture and Debenture Stock	...	...		811,600	...		...	...	
(b) Other Debt—									
3½ p. c. Stock	...	...		95,000	...		...	...	
3 p. c. Stock	...	...		3,000,000	...		...	...	
Proposed Loan	...	...		...	...		2,225,000	...	
Rupee Debt—									
4 p. c. Loans	...	2,500,019			8,200		...	...	
4 p. c. Stock Notes	...	24,713		...	...		...	...	
Miscellaneous	...	51		...	...		...	...	
Total	591,001	2,524,783	3,115,784	4,273,400	8,200	4,281,600	2,225,000	...	2,225,000
Net	...	...	2,062,953	...	...	1,155,400	...	...	2,205,000
Unfunded Debt—									
Temporary Loans	1,250,000	...		750,000					
Special Loans	...	...		...			...		
Treasury Notes and Service Funds	4,339	901,258		4,600	1,048,600		...	940,200	
Savings Bank Deposits		2,479,857			3,020,700		4,800	3,402,200	
Total	1,254,339	3,381,115	4,635,454	754,600	4,069,300	4,823,900	4,800	4,342,400	4,347,200
Net	...	...	352,980	...	...	835,000	...	...	648,400
Deposits and Advances—									
Unspent Balances of Provincial Allotments	...	123,501		...	119,200		...	28,900	
Commission for the Reduction of Debt	...	581,137		...	319,300		...	670,700	
Excluded Local Funds	...	763,554		...	584,000		...	569,300	
Political, Railway, and Military Prize Funds	...	25,112		...	39,400		...	31,300	
Departmental and Judicial Deposits	...	14,447,224		...	15,951,100		...	15,726,900	
Advances	6,802	5,828,645		3,200	9,605,700		2,000	9,930,500	
Suspense Accounts	...	47,828		...	5,000		...	13,000	
Miscellaneous	1,004,594	642,966		250,000	647,100		250,000	38,300	
Total	1,011,396	22,459,967	23,471,363	253,200	27,240,800	27,494,000	252,000	27,020,900	27,278,900
Net	...	...	0	...	...	785,300	...	...	236,100
Loans to Municipalities, Native States, &c.	...	278,702	278,702	...	261,600	261,600	...	376,900	376,900
Net	...	...	171,980	...	...	12,900	...	...	308,100
Capital of Guaranteed and Subsidized Companies	1,752,821	1,732,940		1,148,500	1,715,900		3,464,800	1,612,900	
Capital of Southern Mahratta Railway	151,480	300		1,704,500	3,200		...	2,300	
Western Deccan Railway	...	3,958			...		...	...	
Total	1,903,701	1,737,198	3,640,899	2,853,000	1,719,100	4,572,100	3,464,800	1,615,200	5,080,000
Net	...	...	0	...	...	0	...	...	0
Carried over	5,026,222	101,843,401		8,401,700	103,022,700		6,144,700	105,253,900	

Other than Revenue and Expenditure.

which appear in the General Account.

R10 = £1

	Accounts, 1883-84.			Revised Estimate, 1884-85.			Budget Estimate, 1885-86.		
	England.	India.	Total.	England.	India.	Total.	England.	India.	Total.
	£	£	£	£	£	£	£	£	£
Expenditure (from Abstract B)	15,036,042	55,768,562	70,804,604	14,258,400	56,881,600	71,140,000	14,354,600	57,951,900	72,306,500
Add—Provincial Surpluses transferred to "Deposits"	...	+123,501	+123,501	...	+119,200	+119,200	...	+28,900	+28,900
Deduct—Provincial Deficits charged against "Deposits"	...	—588,180	—588,180	...	—551,800	—551,800	...	—753,100	—753,100
Productive Public Works Capital Expenditure	1,357,347	2,634,682	3,992,029	2,231,300	3,500,900	5,732,400	1,219,000	3,186,400	4,405,400
Permanent Debt discharged—									
Sterling Debt—									
(a) E I R. & E. B. R. Debt—									
3½ p. c. Redemption Stock	...	...		...	...		...	...	
3 p. c. Redemption Stock	...	...		...	...		...	...	
Debenture and Debenture Stock	35,140	...		84,300	...		...	...	
(b) Other Debt—									
India Debentures	...	...		3,009,500	...		...	...	
East India Bonds	1,400	...		1,200	...		...	...	
5 p. c. Stock	3,491	...		1,000	...		...	...	
3½ p. c. Stock	...	...		...	...		...	...	
3 p. c. Stock	...	...		...	...		...	...	
Proposed Loan	...	...		...	...		...	...	
Rupee Debt—									
4 p. c. Loans	...	1,301		...	...		...	...	
4 p. c. Stock Notes	...	...		...	4,200		...	...	
Loans under discharge	...	10,976		...	29,000		...	20,000	
Miscellaneous	..	523		...	...		...	...	
Total	40,031	12,800	52,831	3,093,000	33,200	3,126,200	...	20,000	20,000
Net	...	...	0	...	...	0	...	...	0
Funded Debt—									
Temporary Loans	1,250,000	...		750,000	...		...	...	
Local Loans	...	144,000		...	24,000		...	...	
Treasury Notes and Service Funds	835	681,374		800	796,700		1,000	759,700	
Savings Bank Deposits	...	2,206,765		...	2,397,400		...	2,938,100	
Total	1,250,835	3,032,139	4,282,974	750,800	3,218,100	3,968,900	1,000	3,697,800	3,698,800
Net	...	...	0	...	...	0	...	...	0
Deposits and Advances—									
Unspent Balances of Provincial Allotments	...	588,180		...	551,800		...	753,100	
Commission for the reduction of Debt	1,001,393	756,065		...	3,000		...	2,000	
Excluded Local Funds	...	784,176		...	574,400		...	535,300	
Political, Railway, and Military Prize Funds	...	43,020		...	36,200		...	34,900	
Departmental and Judicial Deposits	...	14,462,132		...	15,014,700		...	15,683,900	
Advances	183	5,092,645		3,200	9,547,800		2,000	9,963,500	
Expense Accounts	...	231,389		...	39,300		...	30,100	
Miscellaneous	1,294	601,119		...	98,300		...	38,000	
Total	1,002,870	23,158,726	24,161,596	3,200	26,765,500	26,768,700	2,000	27,040,800	27,042,800
Net	...	...	690,233	...	...	0	...	...	0
Loans to Municipalities, Native States, &c.	...	106,742	106,742	...	248,900	248,900	...	68,800	68,800
Net	..	...	0	...	...	0	...	...	0
Capital of Guaranteed and Subsidized Companies									
Capital of Southern Mahratta Railway	2,077,266	1,734,585		2,559,500	1,570,800		2,972,600	1,638,200	
Capital of Western Deccan Railway	235,205	408,116		294,800	725,000		500,000	872,300	
	...	29,316			—25,300			...	
Total	2,312,471	2,172,017	4,484,488	2,854,300	2,270,500	5,124,800	3,472,600	2,510,500	5,983,100
Net	...	...	843,589	...	...	552,700	...	...	903,100
Carried over	20,999,596	86,420,989		23,191,200	92,486,100		9,049,200	93,752,000	

Abstract C.—*Details of Receipts and Disbursemen*

	Accounts, 1883-84.			Revised Estimate, 1884-85.			Budget Estimate, 1885-86.		
	England.	India.	Total.	England.	India.	Total.	England.	India.	Total.
	£	£	£	£	£	£	£	£	£
Brought forward	5,026,222	101,843,401		8,401,700	103,022,700		6,144,500	105,253,900	
Remittances—									
Inland Money Orders	...	7,313,417		...	8,101,800		...	9,000,000	
Other Local Remittances (net)	...	...		...	28,900		...	12,000	
Other Departmental Accounts	...	998,291		...	874,100		...	1,004,400	
Net Receipts by Civil Treasuries from—									
Post Office	...	464,517		...	695,200		...	462,600	
Guaranteed Railways	...	4,274,510		...	4,218,900		...	3,987,300	
Net Receipts from Civil Treasuries by—									
Telegraph	...	91,027		...	92,300		...	120,000	
Marine	...	225,222		...	171,500		...	211,600	
Military	...	10,780,933		...	11,333,700		...	11,629,000	
Public Works	...	4,547,752		...	5,796,000		...	5,238,300	
Remittance Account between England and India	429,719	1,389,298		423,500	1,317,700		1,088,700	1,400,500	
TOTAL	429,719	30,090,907	30,520,686	423,500	32,530,700	32,954,200	1,088,700	33,008,300	34,157,0
NET	...	...	10,120	...	...	301,100	...	...	170,5
Secretary of State's Bills drawn	17,599,805	...	17,599,805	13,795,300	...	13,795,300	13,773,700	...	13,773,7
Total Receipts	23,055,746	131,934,308		22,620,500	135,553,400		21,006,900	138,322,200	
Opening Balance	3,429,874	14,821,550		4,113,221	13,199,926		2,213,121	11,920,026	
Grand Total £	26,485,620	146,755,918		26,733,721	148,753,326		23,220,021	150,242,226	

FORT WILLIAM,
DEPT. OF FINANCE AND COMMERCE;
The 17th March 1885.

E. W. KELLNER,
Deputy Comptroller Genera

ther than Revenue and Expenditure—continued.

R10 = £1

	Accounts, 1883-84.			Revised Estimate, 1884-85.			Budget Estimate, 1885-86.		
	England.	India.	Total.	England.	India.	Total.	England.	India.	Total.
	£	£	£	£	£	£	£	£	£
Brought forward	20,999,596	86,420,989		23,191,200	92,486,100		19,049,200	93,752,000	
Remittances—									
Inland Money Orders	...	7,288,981		...	8,101,800		...	9,000,000	
Other Local Remittances	(Net)	20,441		...	...		...	...	
Other Departmental Accounts	...	1,015,644		...	875,000		...	1,003,500	
Net Payments into Civil Treasuries by—									
Post Office	...	470,026		...	605,200		...	462,600	
Guaranteed Railways	...	4,274,510		...	4,118,900		...	3,987,300	
Net Issues from Civil Treasuries to—									
Telegraph	...	92,583		...	92,300		...	120,000	
Marine	...	227,487		...	171,500		...	211,800	
Military	...	10,779,291		...	11,333,700		...	11,620,600	
Public Works	...	4,571,315		...	5,314,100		...	5,238,300	
Remittance Account between England and India	1,372,803	391,485		1,329,400	713,200		1,474,700	859,100	
TOTAL	1,372,803	29,137,763	30,510,566	1,329,400	31,323,700	32,653,100	1,474,700	32,512,000	33,986,700
NET	...	...	0	...		0	...		0
Secretary of State's Bills paid	...	17,997,240	17,997,240	...	13,023,500	13,023,500	...	13,773,700	13,773,700
Total Disbursements	22,372,399	133,555,992		24,520,600	136,833,300		20,523,900	140,037,700	
Closing Balance	4,113,221	13,199,926		2,213,121	11,920,026		2,696,121	10,204,526	
Grand Total	26,485,620	146,755,918		26,733,721	148,753,326		23,220,021	150,242,226	

J. WESTLAND,
Comptroller and Auditor General.

D. BARBOUR,
Secretary to the Government of India.

Abstract D.—*Account of Provincial and Local Savings charged to Revenue, and held at the disposal of Provincial Governments under the Provincial contracts.*

Provincial and Local Balances.

NOTE.—These balances do not include the Balances of Deposits and Advances upon Local Fund Accounts.

	India.	Central Provinces.	Burmah.	Assam.	Bengal.	N.-W. P. & Oudh.	Punjab.	Madras.	Bombay.	Total.
Accounts, 1883-84.	£	£	£	£	£	£	£	£	£	£
Balance at end of 1882-83(a) .	9,535	231,818	223,577	117,541	886,226	1,075,960	305,854	710,437	553,947	3,613,3
Added in 1883-84 . . .	...	82,108	...	...	...	...	16,205	25,188	...	123,5
Spent in 1883-84 . . .	28	...	95,020	5,271	123,533	354,946	...	...	9,382	588,1
Balance at end of 1883-84 .	9,507	313,926	128,557	112,270	862,693	721,014	322,059	735,625	543,565	3,149,2
Revised Estimate, 1884-85.										
Balance at end of 1883-84 (by Accounts).	9,507	313,926	128,557	112,270	862,693	721,014	322,059	735,625	543,565	3,149,2
Added in 1884-85 . . .	...	1,400	...	...	117,800	...	...	...	...	119,2
Spent in 1884-85 . . .	2,100	...	105,700	49,700	...	107,800	38,600	140,700	807,200	551,8
Balance at end of 1884-85 .	7,407	315,326	22,857	62,570	380,493	613,214	283,459	594,925	436,365	2,716,6
Budget Estimate, 1885-86.										
Balance at end of 1884-85 (by Revised Estimate.)	7,407	315,326	22,857	62,570	380,493	613,214	283,459	594,925	436,365	2,716,6
Added in 1885-86 . . .	...	...	28,900	...	...	...	...	...	...	28,9
Spent in 1885-86 . . .	3,300	64,700	...	13,300	51,000	501,800	57,300	56,400	5,300	753,1
Balance at end of 1885-86 .	4,107	250,626	51,757	49,270	329,493	111,414	226,159	538,525	431,065	1,992,4

(a) See Appropriation Report, Abstract D.

E. W. KELLNER,
Deputy Comptroller General.

J. WESTLAND,
Comptroller and Auditor General.

D. BARBOUR,
Secretary to the Government of In

FORT WILLIAM,
DEPT. OF FINANCE AND COMMERCE;
The 17th March 1885.

	Accounts, 1883-84.					Revised Estimate, 1884-85.					Budget Estimate, 1885-86.				
	Gross Revenue.	Refunds and Drawbacks.	Total after deducting Refunds and Drawbacks.	Charges in respect of Collection.	Net Revenue.	Gross Revenue.	Refunds and Drawbacks.	Total after deducting Refunds and Drawbacks.	Charges in respect of Collection.	Net Revenue.	Gross Revenue.	Refunds and Drawbacks.	Total after deducting Refunds and Drawbacks.	Charges in respect of Collection.	Net Revenue.
	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£
Land Revenue	22,361,899	221,589	22,140,310	3,329,147	18,811,163	21,546,300	62,300	21,484,000	3,346,600	18,137,400	22,334,200	59,300	22,274,900	3,444,300	18,830,600
Opium	9,576,501	711	9,555,790	1,854,690	7,701,100	8,850,000	700	8,849,300	2,946,500	5,902,800	9,025,500	1,000	9,024,500	2,478,200	6,546,300
Salt	6,145,413	34,597	6,110,816	446,641	5,664,175	6,350,000	28,100	6,321,900	459,600	5,862,300	6,400,000	37,600	6,362,400	492,500	5,870,100
Stamps	3,513,201	39,272	3,473,929	109,094	3,364,835	3,578,000	41,700	3,536,300	129,400	3,406,900	3,631,400	44,200	3,587,200	129,500	3,459,700
Excise	3,830,961	30,478	3,800,483	92,359	3,714,124	4,013,500	23,200	3,990,300	103,400	3,886,900	4,070,000	21,800	4,048,200	123,500	3,924,700
Provincial Rates	2,874,731	10,687	2,863,044	54,547	2,813,497	2,793,900	7,200	2,786,700	111,400	2,675,300	2,856,800	7,800	2,849,000	113,500	2,735,500
Customs	1,187,260	31,103	1,156,103	139,345	1,016,758	1,030,000	31,900	998,100	136,800	861,300	1,175,000	33,500	1,141,500	133,200	1,008,300
Assessed Taxes	526,087	15,968	510,119	13,214	496,905	511,800	15,100	496,700	13,200	483,500	514,900	15,300	499,600	13,400	486,200
Forest	1,052,190	2,913	1,049,277	649,375	399,902	982,300	2,600	979,700	701,500	278,200	1,061,000	2,700	1,058,300	720,600	328,700
Registration	258,053	892	258,063	167,091	90,972	280,800	1,100	279,700	176,700	103,000	281,800	1,200	280,600	181,100	99,500
Tributes from Native States	720,487	...	720,487	...	720,487	695,200	...	695,200	...	695,200	691,300	...	691,300	...	691,300
	52,037,691	388,270	51,649,421	6,855,503	44,793,918	50,631,800	213,900	50,417,900	8,125,100	42,292,800	52,043,900	224,400	51,819,500	7,838,600	43,980,900
Deduct—Assignments and Compensations					1,238,840					1,232,100					1,248,500
Productive Public Works			13,240,507	12,033,873	43,555,078 1,206,634			12,923,900	12,358,000	41,060,700 565,900			13,707,000	13,033,600	42,732,400 673,400
Total Net Revenue					44,761,712					41,626,600					43,405,800

Net Expenditure.

	Accounts, 1883-84.			Revised Estimate, 1884-85.			Budget Estimate, 1885-86.		
	Gross Expenditure.	Receipts.	Net Expenditure.	Gross Expenditure.	Receipts.	Net Expenditure.	Gross Expenditure.	Receipts.	Net Expenditure.
	£	£	£	£	£	£	£	£	£
Interest	4,276,266	...	4,276,266	4,404,900	...	4,404,000	3,953,000	...	3,953,000
Post Office, Telegraph & Mint	1,984,058	1,672,761	311,297	2,131,300	1,789,200	342,100	2,216,400	1,792,900	423,500
Civil Departments	11,250,038	1,427,729	9,822,309	11,472,400	1,402,100	10,070,300	11,778,200	1,426,300	10,351,900
Miscellaneous Civil Charges	3,882,529	1,512,604	2,369,925	3,909,500	1,369,400	2,540,100	4,012,500	1,346,500	2,666,000
Famine Relief and Insurance	1,500,000	...	1,500,000	1,500,000	...	1,500,000	1,500,000	...	1,500,000
Public Works not classed as Productive	6,580,721	879,897	5,700,824	6,569,700	1,008,700	5,561,000	7,193,300	920,400	6,272,900
Army Services	16,975,750	956,232	16,019,518	15,970,200	866,100	15,104,100	15,734,400	853,400	14,881,000
Exchange on Transactions with London	3,838,756	...	3,838,756	3,252,900	...	3,252,900	3,573,600	...	3,573,600
	50,288,118	6,449,223	43,838,895	49,210,900	6,435,500	42,775,400	49,961,400	6,339,500	43,621,900
Provincial and Local Surpluses and Deficits	Surplus. +123,501	Deficit. −588,180	−464,679	+119,200	−551,800	−432,600	+28,900	−753,100	−724,200
Total Net Expenditure			43,374,216			42,342,800			42,897,700
Surplus (+) or Deficit (−)			+1,387,496			−716,200			+508,100
			44,761,712			41,626,600			43,405,800

Fort William,
Dept. of Finance and Commerce;
The 17th March 1885.

E. W. KELLNER,
Deputy Comptroller General.

J. WESTLAND,
Comptroller and Auditor General.

D. BARBOUR,
Secretary to the Government of India.

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Summary of Financial Statement, 1885-86.

THE Financial Statement for the year 1885-86 is published in the *Gazette* in the form of a Minute by Sir Auckland Colvin. The Minute commences by stating that the three years 1882-83, 1883-84, and 1884-85 have, between them, given a surplus of revenue over expenditure of about £1,378,000, and that, exceptional circumstances apart, the normal increase of revenues has been found to balance the ordinary expenditure, and has justified the abolition of the import duties and the lowering of the salt tax. On the other hand, attention has of late been drawn, even more seriously than in former years, to the consequences of a further depreciation in the value of silver. For the first time a rate of exchange no higher than 1*s.* 7*d.* has been taken, and the prospects of exchange for the future are by no means encouraging; hence, the question arises, whether the status established by the reforms above alluded to will prove sufficient in view of these, and of difficulties, which can be foreseen, connected not only with the state of the currency, but also with the measures necessary for the development and protection of the country. The Minute says—

"The experience which we shall gain during the ensuing year as to the effect upon our estimates of the several considerations I have indicated will, probably, be invaluable in adding to the means at our disposal for forming a final opinion upon this point; a point which obviously depends, not in the least on the adequacy or otherwise of the financial resources provided us in their relation to the state of affairs which existed at the commencement of the decade, but on the consideration whether affairs are not passing into a new phase which was then, though not unforeseen, less imminent; which could not therefore be taken into immediate consideration; but which, should it now arrive, must be met on the lines of the policy then adopted, and in conformity with the principles by which it was inspired."

The Accounts for 1883-84 show a surplus of £1,387,496. It is briefly explained that this surplus is partly due to increase of revenue over expenditure, but in considerable part to the collection of more than half a million of land revenue in 1883-84 which ordinarily would have fallen to 1884-85, and to the removal of £325,000 from the revenue accounts, under the orders of the Secretary of State, in connection with the Indus Flotilla and the Sindh, Punjab, and Delhi Railway.

The Revised Estimates for 1884-85 show a deficit of £716,200. This deficit is attributed in part to the accelerated payment of land revenue above mentioned, and in part to the fact that land revenue amounting to £343,900 which should have been ordinarily collected in 1884-85 has been suspended until the ensuing year on account of partial failure of the monsoon and consequent damage to the crops in the Presidencies of Bombay and Madras. For the rest the deficit on the Revised Estimates is partly due to the great falling off, during the year, in Railway receipts, especially those of the East Indian Railway, in consequence of the stagnation of the wheat trade. The East Indian Railway receipts were £418,800 less than were estimated. Customs also have fallen off by £259,500 owing to the depression in the rice trade. On the other hand, a sum of £593,600 larger than that which was estimated on account of opium expenditure, had to be provided during the current year, in consequence of the extraordinary yield of opium. Finally, there was provided from revenue during the year on account of capital expenditure on frontier railways the sum of £118,500. Attention is drawn to the fact that exchange, which had been taken at £3,538,100, is shown in the Revised Estimates at £3,252,900, or £285,200 less than the estimated figure, as the Secre-

tary of State was enabled to supplement his bills by drawing on the resources at his disposal in England.

The Minute enters at considerable length into the course of trade, during 1884-85, and illustrates the decline in the quantity and value of exports of most of the principal articles of Indian produce, especially drawing attention to the depression of the wheat and the rice trade. After furnishing figures illustrating the abnormal quantity of the opium crop in 1884-85, and calling attention to the progressive increase in the consumption of salt, in deposits in Savings Banks, and the imports of gold, it passes on to an analysis of the detailed figures of the Revised Estimates of 1884-85 and thence to the Budget Estimates of 1885-86.

The Budget Estimates of 1885-86 are as follows:—

	£
Revenue	72,090,400
Expenditure	71,582,300
Surplus	508,100

The Minute explains that a sum of £585,000 has been allotted from revenue for capital expenditure on railways and for Harbour Defence Works, in the ensuing year, and that this sum would otherwise have formed part of the surplus of revenue over expenditure.

On the other hand, it points out that the figure of £585,000 has been omitted from the Estimates, as the drawings of the Secretary of State will be reduced this year by a sum yielding a saving of exchange to the above amount. This saving, however, is apparent only, arising from the fact that expenditure, so far as it is effected in pounds sterling in England by means of sums made available there to the Secretary of State, is not represented at its true exchange value in the year's accounts.

The Minute then goes on to say that the main features of the coming year are four:—

"*First*, that it will give an effect, in the Budget, to the measures recommended, at the instance of the Government of India, by the Parliamentary Committee, for the construction of railways, with such further development as the circumstances of the time render imperative.

"*Secondly*, that it compels us, owing to the temporary stagnation of the wheat and rice-trade, to take estimates for our railway and customs receipts at a considerably lower figure than those which in a normal year we should look for.

"*Thirdly*, that we have been compelled, owing to the fall in the value of silver, to take so low a rate as 1*s*. 7*d*. for our exchange.

"*Finally*, that we have devoted the sum of £500,000 above mentioned from our revenues for the improvement of our railway communications, besides certain further subsidiary sums for frontier roads and the defences of Aden and of certain harbours in India."

It deals at considerable length with the four points above noticed, and then proceeds to an analysis of the detailed estimates of 1885-86.

The Railway and Customs Estimates have been framed with due regard to the present depression in trade. The number of chests of opium to be sold in 1886 will be announced hereafter. The prospects of the crop in the ground are good. The average price of Bengal opium has been taken at under R1,250 per chest. The opium reserve on the 31st December 1885 is estimated to be 18,297 chests.

The rate of exchange for 1885-86 has been taken at 1*s*. 7*d*. Provision is made for the remittance of £13,773,700 to the Secretary of State in 1885-86. The annual loan for Public Works will be raised in England, though no pledge is given.

It is stated that all expenditure connected with the expedition to Suakim, other than ordinary expenditure such as would have been borne had the troops remained in India, will be defrayed by the English Government.

The cash balance, including India and England, on March 31st, 1885, is estimated at £14,133,147, and on the 31st March 1886 at £12,900,647.

The Statement concludes its analysis of the financial situation in the following words :—

"The year commences with a surplus which is more or less considerable according as the grants for capital expenditure are included in or excluded from our calculations. If during the ensuing year we are not called upon to submit to any material increase of expenditure, the estimates, based as they are on a very low rate of exchange and a very moderate calculation as to the revival of our trade, may, I think, be trusted to bear the test of trial. Should trade revive or exchange become more favourable, we shall have resources ample to meet our estimated expenditure. On the other hand, it is impossible to say whether additional expenditure may not in the course of the year have to be provided for, exceeding the limits of any addition which our revenues may reasonably hope to derive from the strengthening of our railway receipts or from improvement in our exchange. To put it in other words, heavily as we are weighted from the two causes above indicated, there is no reason why our resources should not fully suffice to meet all normal expenditure during 1885-86. But if abnormal expenditure, whether of a temporary or permanent kind, is forced upon us, our estimates, even should they be strengthened by a more favourable combination of exchange and trade, may very probably prove unequal to meet it. It is to be hoped that the financial prosperity, the good harvests, and the undisturbed peace, which have of late years been accorded to us will continue. But it is necessary to state clearly the position in which, owing to the concurrence of a variety of unfavourable conditions, we find ourselves placed, in order that considerations which inevitably presented themselves when the estimates were being famed may be fully explained to the public, and that we may not be charged, should difficulties increase upon us, with having taken too sanguine a view of our position."

N. B.—Will be published in the Gazette of India of the 21st February, 1885.

GENERAL ORDER.

MILITARY DEPARTMENT.

Fort William, the 14th February, 1885.

FIELD OPERATIONS.

No. 88.—Under instructions from Her Majesty's Government, the Right Hon'ble the Governor General in Council has been pleased to direct that a force, as detailed below, be despatched for service at Suakim:—

Strength of the Force.

1 Regiment Native Cavalry.
3 Regiments Native Infantry.
1 Company Sappers and Miners.

Detailed as follows.

9th Bengal Cavalry.
15th Bengal Infantry (Loodhiana Sikhs).
17th Bengal Infantry (Loyal Poorbeahs).
28th Bombay Infantry.
1 Company Madras Sappers and Miners.

The appointments herein made will have effect from the dates on which the officers named may enter upon the duties thereof:—

Colonel J. Hudson, C.B., Bengal Staff Corps . .	Commanding.
Captain C. W. Muir, Bengal Staff Corps . . .	Aide-de-Camp.
Major R. McG. Stewart, Royal Artillery . .	Assistant Adjutant-General and Quarter-master-General.
Major N. R. Stewart, Bengal Staff Corps . .	Deputy Assistant Adjutant and Quarter-master-General.
Major A. J. Pearson, Royal Artillery . . .	Deputy Assistant Adjutant and Quarter-master-General (for Intelligence).
Major J. Cook, Bengal Staff Corps . . .	Brigade-Major.

Medical Department.

Brigade-Surgeon J. H. Thornton, M.B., Bengal Medical Service,—Principal Medical Officer.
Brigade-Surgeon J. C. Morice, Bengal Medical Service.
Surgeon G. A. Emerson, Bengal Medical Service.
Surgeon J. F. MacLaren, M.B., Bengal Medical Service.
Surgeon W. A. Sykes, Bengal Medical Service.
Surgeon W. G. P. Alpin, Bengal Medical Service.

Military Accounts Department.

Lieutenant H. F. S. Ramsden, Madras Staff Corps .	Field Paymaster.

Commissariat Department.

Lieutenant-Colonel E. S. Walcott, Bombay General List, Infantry	Senior Commissariat Officer.
Captain H. C. E. Lucas, Bombay Staff Corps . .	Sub Assistant Commissary-General.
Captain G. B. E. Radcliffe, Bombay Staff Corps . .	Sub Assistant Commissary-General.

Provost Establishment.

Captain H. R. L. Holmes, Bengal Staff Corps . .	Provost Marshal.

The following regulations are laid down for the guidance of all concerned:—

1. Native regiments will go as far as possible on their full established strength of 550 of all ranks for cavalry, and 832 for infantry, *minus* the depot establishment.

2. Commanding officers will be held responsible that none but officers, men, and followers in every way fit for field service accompany the regiment. After eliminating sickly men they will complete with volunteers from other regiments. Regiments giving volunteers will recruit to complete establishment.

3. Each Native regiment will be completed to its full establishment of eight British officers, including those who may be recalled from furlough, and who may be expected to join.

4. Followers, servants, baggage, camp equipage, and kit for staff and departmental officers will be according to the Kabul scale, but without grass-cutters, except as hereinafter laid down for the cavalry. Regiments will be completed with full establishments in their respective presidencies. Each regiment to take field mule transport. Entrenching tools to be taken according to Kabul scale.

5. Depots for regiments will be formed under the orders of the Commander-in-Chief in India and of the Governments of Madras and Bombay, in accordance with G. O. No. 39 of 1884.

6. Mule *pucknls* will be supplied as follows :—

8 per company, with 10 spare *mussucks*.

Chaguls—

1 per man for cavalry to be supplied by the Commissariat Department.

7. Native infantry will draw extra batta; and free rations will be allowed to all ranks of cavalry and infantry while on foreign service.

Troops not provided by the State with carriage will draw extra batta from date of marching. Non-batta drawing regiments will draw extra batta from date of embarkation.

8. Each Native commissioned officer of the cavalry will be required to keep up one pony and one attendant as syce and grass-cutter, whether he takes one or two horses; and the non-commissioned officers and privates to maintain one pony and one grass-cutter for every two horses.

9. Compensation at the rate of R5 per mensem will be allowed to the Native officers for each bargheer sanctioned by existing regulations, if maintained by them, out of which sum they will pay the share of the grass-cutter's wages and provide the stable gear. A similar amount will be deducted from the pay of the bargheer sowars.

10. As during a sea voyage the officers, non-commissioned officers, and sowars of the cavalry would be unable to make the requisite provision for the forage of their horses, whilst difficulty might be experienced in this respect during a portion of their service on land, the forage of the horses and of the mules or ponies accompanying will be undertaken by the Commissariat, with such assistance as the regiments and followers may be enabled to render after landing.

11. All ranks will be required, as at present, to maintain one efficient horse; but the Native commissioned officers will be allowed forage for two horses each, if they desire to take a second charger.

12. The grass-cutters will be paid by the troops as usual; but the ponies will receive grain, and, when necessary, hay, free of cost. Both grass-cutters and animals will be employed to procure forage when obtainable, and must be held disposable for all purposes.

13. The Native commissioned and non-commissioned officers of cavalry will continue to subscribe to the regimental funds to such extent as commanding officers may deem necessary within the limits prescribed by regulations.

14. They will continue to supply themselves with the ordinary clothing, equipment, saddlery, and stable gear for their horses; but articles of extra clothing which may be necessitated by any specialty of climate or service will be issued free of cost.

15. All casualties of horses or ponies arising from neglect or from causes evidently unconnected with the particular nature of the service must, as usual, be replaced by the regiments concerned. Each troop will be allowed to embark and maintain two chunda horses, to meet casualties, which will be rationed free of cost.

16. All casualties among horses or ponies fairly attributable to, or connected with, the service, including those from accident on boardship or during embarkation or disembarkation, will, if there has been no proved neglect, be replaced by Government, or compensation will be allowed under the rules in Army Regulations for India, Volume II.

17. During the continuance of the arrangement under which the supply of grain and forage to the cavalry is undertaken by the State, the pay of the several grades will be as follows :—

Bengal Cavalry.

		Rates of pay.		
		R	a.	p.
1	Ressaldar, 1st class	300	0	0
1	,, 2nd ,,	250	0	0
1	,, 3rd ,,	200	0	0
1	Ressaldar, 1st ,,	150	0	0
1	,, 2nd ,,	135	0	0
1	,, 3rd ,,	120	0	0
1	Woordie Mayor	150	0	0
2	Jemadars, 1st class	80	0	0
2	,, 2nd ,,	70	0	0
2	,, 3rd ,,	60	0	0
	Duffadars	30	0	0
	Trumpeters	25	0	0
	Sowars	20	0	0

18. Public followers, except those engaged on salaries specifically laid down for the occasion, will receive an addition of 50 per cent. on pay and batta, in addition to free rations, while on foreign service.

19. The sanctioned followers paid by the troops will receive from Government free rations and such extra pay as may be necessary to put them on a par with the public followers of a similar class.

20. The scale of rations for Native troops on shore will be that laid down in Article 583, Army Regulations, India, Volume V, extracted in the margin. An allowance of 1 lb. of meat per man weekly is also authorized.

Atta, 2 lbs., or rice	1½ lbs.
Dhal	4 oz.
Ghee	2 ,,
Salt	½ ,,
Onions	1 ,,
Pepper	,,
Chillies	½ ,,
Turmeric	½ ,,

When meat, even on special occasions, is issued, the ration of atta or rice is to be reduced one-half.

No claim for pecuniary compensation can be admitted, if through accident any part of the above authorised scale of rations is not forthcoming.

The issue of tea and sugar should be confined to the cases of sick and wounded for whom medical officers may authorize it, and for the rest of the troops on special occasions of fatigue, exposure, or bad climate, when recommended by the principal medical officer. On such occasions 2 oz. of sugar and ½ oz. of tea per man may be issued.

Tobacco can only be issued on payment at the rate of 1 oz. per man per diem, the price charged being the first cost to Government, without any addition on account of carriage or losses.

The scale of rations for followers will be as follows :—

Wheat flour, or rice	1½ lbs.
Dhal	4 oz.
Ghee	1 ,,
Salt	½ ,,

21. On land the forage allowance for each horse will be 8 lbs. of such grain as may be procurable, with 14 lbs. of hay when green forage is not procurable, or otherwise as may be ordered. The allowance for ponies will be one-half of the forage ration of a horse.

22. British officers will be allowed to draw rations for themselves, servants, and horses from the Commissariat Department, payment being made as laid down in Article 1677, Army Regulations, India, Volume V—

Officers—

	R.	a.	p.
Rations for themselves, daily, exclusive of rum or extra supplies	0	8	0
Rations for their servants, monthly	2	8	0
Rations for each horse, daily	0	8	0

23. Transport will be charged for at the rates laid down for the Afghan war, namely, 8 annas and 7 annas per diem for camels and mules, respectively.

24. The officer of the Military Account Department with the force will act as Field Paymaster, and have charge of the treasure chest.

25. Pay lists of Native troops will be forwarded, as soon after the first of each month as may be possible, through the Field Paymaster, to the Pay Examiner of the presidency to which the troops belong. Officers commanding regiments will draw monthly from the field pay office such sums as may be required for the pay of themselves and their men, after making provision to meet family allotments and remittances, fund subscriptions, &c., the amount of which allotments, &c., they will debit themselves with in their general states.

26. The pay bills of all staff and departmental officers will be adjusted by the Field Paymaster.

27. All payments to Native troops will be made in the coinage of the country or British money, their pay and allowances being converted into that coinage, under the orders of the General Commanding, at the rates of exchange current in Egypt.

28. Officers commanding Native regiments and detachments detailed for service are directed to at once draw and distribute three months' pay in advance to their respective corps.

29. Staff and departmental establishments may receive similar advances, not including command, contract, office and staff allowances.

30. The family remittances of Native troops will be arranged for, as usual, by officers commanding regiments. Officers and non-commissioned officers, requiring remittances to India, may remit the whole or any part of their pay to India at par on paying the amount to the Field Paymaster, who is authorized to grant transfer remittance receipts on any treasury in India. As an alternative arrangement, officers may leave with the Presidency Paymaster, Bombay, an allotment roll stating the amount they wish to be paid monthly, and the person to whom it should be remitted. That officer will then make the necessary remittance monthly and he will furnish the Field Paymaster with a list of the sums thus allotted, to enable the latter to make the necessary deduction from officers' pay bills. Remittances to England for the benefit of their families may be made through the Field Paymaster at the official rate of exchange, to the extent of one-half of an officer's clear receipts, exclusive of office and contingent allowances

31. Officers of the expeditionary force should recover from the pay of followers serving under them the amount that each man may desire to be paid to his family in India, and send to the Controller of Military Accounts, Accounts Branch, Bombay, in time to reach him not later than the 20th of each month, a statement* of such recoveries, according to which the families will be paid under instructions to be issued by that officer. The amount thus recovered should be paid to the Field Paymaster, whose receipt should be entered on, or attached to, the statement.

* Form attached.

32. Every care should be taken to fill in the statements correctly from the tickets given to the men on engagement and the records in the field. Where the information is not available, owing to the loss of the tickets or any other cause, immediate application should be made to the depot commanding or departmental officers concerned.

33. Clothing and equipment on the following scales will be issued to troops and followers :—

Native Troops.

Waterproof sheet	1
Jerseys	2
Shoes (Native), pair	1
Putties	1
Blanket (country)	1
Canvas frock, for boardship	1
Flannel belts	3

Followers.

Waterproof sheet	1
Banians or jerseys	2
Shoes (Native), pair	1
Blanket	1
Lascar or follower's coat	1
Flannel belt	1
Pyjamahs (cotton)	2
Tin canteen	1
Haversack	1

Water-proof sheets for troops and followers to be held in Commissariat charge and to be issued under the orders of the General Officer Commanding as required.

34. In addition to the above, the regulated service kit for all troops will be maintained complete. Regiments are to take their colours, and officers and men the whole of their uniform except full-dress uniform.

35. Ten per cent. of field service clothing for the whole force will be held in store by the Commissariat and issued as required.

36. Tulwars will be provided for 50 per cent. of followers for issue should the General Officer Commanding deem fit.

37. The following amount of ammunition will be taken:—

500 rounds per rifle, 200 in regimental charge; and 300 rounds per carbine, of which 100 will be in regimental charge.

38. All the arrangements special to this service will have effect from the date of embarkation, and continue in force until the date of return.

39. The embarkation and all subsidiary arrangements will take place under the orders of the Commander-in-Chief in India.

Statement of Recoveries on account of Family Payments of Followers, &c., on Field Service during the Month of 188 .

Followers, &c.				Family Certificates.					Remarks.
1 Designation.	2 Name.	3 Where enlisted.	4 Corps or Department to which attached.	No. of ticket.	To whom payable, and relationship to followers.	Amount recovered.	Period for which recovered.	By whom and where payment is to be made.	

Appointments.

No. 89.—Brigade—

With reference to G. G O. No. 88 of this date, Colonel J. Hudson, C.B., Bengal Staff Corps, Commandant, 28th Bengal Infantry, will have the temporary rank of Brigadier-General, 2nd class, while employed in the command of the troops proceeding to Suakim.

G. CHESNEY,

Secretary to the Government of India.

EXTRA SUPPLEMENT TO

The Gazette of India.

CALCUTTA, SATURDAY, MAY 2, 1885.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Thursday, the 5th March, 1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The adjourned debate on the Hon'ble the Mahárájá of Durbhunga's amendment that in line 4 of section 23 of the Bill, after the word "unfit" the words "or permanently less fit" be inserted, was resumed this day.

His Excellency THE PRESIDENT said that at the close of yesterday's proceedings the consideration of section 23 of the Bill was postponed, with the view of considering an amendment which had been moved by the Hon'ble the Mahárájá

of Durbhunga. His Excellency understood that the hon'ble member in charge of the Bill thought he would be able to meet the Maháráj's wishes.

The Hon'ble Sir Steuart Bayley said :—" I propose to meet the hon'ble member's wishes in the following way, by the insertion of the words 'materially impair the value of the land or' after the words 'does not' in line 4 of section 23.

The amendment was put and agreed to.

The Hon'ble Mr. Amír Alí said :—" Before I move the next amendment, which stands in my name, I would beg permission to make an alteration in clause (*a*). The amendment will run thus :—

That after Section 24 of the Bill the following section be added :—

An occupancy-raiyat shall be entitled in Bengal Proper to transfer his holding in the same manner and to the same extent as other immoveable property :

'(*a*) Provided, however, that, where the right of transfer by custom does not exist, in the case of a sale the landlord shall be entitled to a fee of 10 per cent. on the purchase-money.

'(*b*) Provided also that a gift of an occupancy-right in land shall not be valid against the landlord unless it is made by a registered instrument.

'(*c*) The registering officer shall not register any such instrument except on payment of the prescribed fee for service on the landlord of notice of the registration.

'(*d*) When any such notice has been registered, the registering officer shall forthwith serve notice of the registration on the landlord.'

" With reference to the subject of this motion, I have already pointed out the reasons which lead me to think that the excision of the transferability clauses from the Bill has been a mistake, and I do not wish to take up the time of the Council at any length in support of the contention that those clauses should be restored. I believe it has been sufficiently established that the raiyats who possess the right of free transfer are more prosperous and better able to withstand the visitations of famine and scarcity than those who do not possess that right. And I believe it has also been sufficiently proved that the fears which are entertained by some people, that if the power of free transfer is given to occupancy-raiyats, the holdings will pass into the hands of moneylenders, are in the main groundless. The information collected at the instance of the Bengal Government, I think, has established conclusively that it is not the case that where the right of transfer is exercised by raiyats their holdings pass into the hands of money-lenders; that in the majority of instances the transfers are, as a matter of fact, made to *boná fide* cultivators; and that wherever the right exists and is exercised the raiyats hold with the utmost tenacity to their holdings; that their cultivation is better and their standard of living superior to those of other raiyats. It also, I believe, is shown upon the evidence to which I have referred that changes in the ownership of occupancy-holdings are less frequent than among the proprietors themselves. I will call one instance to the recollection of the Council, and that is the case of the guzáshtadárs of Shahabad. In view of these circumstances I would urge upon the Council the acceptance of my amendment. I know that the excision of the transferability clauses has met with the approval of the Executive Government and the high authority of Your Excellency; and therefore in bringing forward the present motion I do so with a certain amount of hesitation and diffidence. The question, however, is one of very great importance, and my apology for urging it on the Council consists in the testimony borne by the hon'ble member in charge of the Bill himself to the prosperous condition of the raiyats who possess the right of transfer. It is said that the right of transfer would prove detrimental to the interests of the zamíndárs. With reference to that I desire to make one or two observations, and I hope they will be considered carefully by the Hon'ble Peári Mohap Mukerji. The zamíndár has been given the power of selling up an occupancy-holding in execution of decrees for arrears of rent, even when there is no right of transferability attached to the holding itself. Of course, where the right of transfer is attached to the holding, as in Bhagulpore and Shahabad, higher prices will be obtained for such occupancy-holdings. But in places where there is no right of transfer possessed by the raiyats the value of the

holding will be nominal, and the price obtained will not cover the amouht of arrears and the cost of litigation. Then, in the next place, we have made no change in the power of sub-letting. Well, sub-letting having been maintained without any change, it is not difficult to imagine that people wishing to buy occupancy-holdings can easily get round the provisions in the Bill against absolute transfer by simply offering a good salámí and getting the holding in that way. The very complications which the zamíndárs wish to avoid by keeping back the power of transfer will arise under the power of sub-letting. Therefore, by denying the right of transferability, by making it dependant upon custom, we have not gained much, but we have done considerable harm. I believe the Council is aware that, where the right of transferability has not been sufficiently established by long usage, a small fee is paid by the raiyat for obtaining the consent of the landlord; not unfrequently he has to pay, besides, a conciliation fee to the ámlá. In places where the custom has been long established, where the practice has been recognized by long usage, the raiyat does not pay any fee. The question having been raised as to the right of the occupancy-raiyat to transfer the tenure, there is every reason to fear that the zamíndárs, even in those places where the right of transfer has been up to this time exercised without question, will not allow it unless a substantial portion of the purchase-money is made over to them. Whether that eventuality is one which is at all desirable I would leave to this Hon'ble Council to judge. I believe the legislature would be extremely unwilling to leave, by the excision of the transferability clauses, any such loophole which will either endanger rights which do exist and are exercised at present, or will be likely to interfere with the growth of the custom of transferability which is admittedly doing so much good towards the prosperity of the raiyat. I will only add a few words to explain the meaning of the amendment. As a matter of fact, the Council will perceive that what I ask for is the re-insertion of the clauses in the former Bill with a slight modification, namely, in clause (*a*). That clause did not exist in the sections which were cut out of the former Bill. My object in inserting it is to give to those landlords on whose estates the right of transfer does not exist a substantial fee by way of salámí for their consent or acquiescence in the sale. The fee they now get is a fee of an unrecognised character. By clause (*a*) they will get a recognised substantial fee. Of course, in places where the right is exercised now without dispute, they are not entitled to any fee, and it will not be right for them to expect any. In the second place, I confine the operation of the section to Bengal Proper. The Bengal Government in its letter of September last pointed out the reasons why it is desirable to confine the right of free transfer to Bengal Proper.

"In Behar there are various reasons which render it expedient not to extend the right to the whole of that province independently of existing custom. I had accordingly brought forward a proposal in Committee to exclude Behar from the operation of the proposed provision to render occupancy-holdings generally transferable. That proposal was not accepted, but the Committee have since decided to omit the transferability clauses with reference to the entire province. I agree with the Bengal Government in the view that the right should be confined to Bengal Proper alone, and consequently my amendment refers to Bengal Proper alone. As for the meaning of 'transfer' and 'gift,' they are defined in the Transfer of Property Act, and for this reason I do not think it is necessary to insert any definition of those words here. I beg therefore to move that the clauses which I have read out may be re-inserted in the Bill, and the numbering of the sections be altered accordingly."

The Hon'ble SIR STEUART BAYLEY said:—"I have been permitted to explain to the Council what my own personal views are on the subject; but as a member of the Executive Council, the Executive Council having decided that transferability of these tenures should not be accepted as a principle of general application in this Bill, it is not right that I should ask the Council to support the amendment of my hon'ble friend opposite, nor, under the circumstances, do I think that I am justified in again taking up the time of the Council in explaining why the Executive Council decided not to have it. In its present shape it is clear that the amendment is one which could not receive the coun-

tenance of the Government of Bengal, and I therefore think that any discussion on it would be of no practical value. But I would like to point out that the amendment does not provide for the great difficulty which the Government of Bengal had felt in reference to the necessity of excluding the moneylenders. The Government of Bengal, in a letter of September last and subsequent communications, remarked that, even if the right is restricted to Bengal, still they could not support it, unless it was so hedged in that occupancy-holdings should fall only into the hands of persons who derived their main support from agriculture. The motion does not meet the *sine qua non* to which the Government of Bengal insisted, nor can it be accepted without other difficulties arising. It was left, for instance by this motion, for the Courts to decide what 'Bengal Proper' was, and in the next place the registering officer would have to decide what was the custom, and whether it existed or not. With these remarks I leave the matter in the hands of the Council."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"When the Government of India recommended a provision for the free sale of occupancy-holdings, they were not ignorant of the possible injury which such a provision would give rise to. In their despatch to the Secretary of State the Government of India said :—

'So far we have considered the landlord's interests, but the protection of the raiyat is a matter of much greater difficulty. The moneylender by means of mortgage might appropriate the whole profits of these holdings, or by foreclosure or purchase he might be possessed of the occupancy-right.'

"The question was thoroughly discussed in Select Committee, and it was found that not only high officers of State considered it to be a dangerous provision, but that the experience which the country had obtained from the operation of such a provision in the Dekkhan and the Sonthal Parganás showed clearly that was not at all desirable. The Chief Justice of Bengal truly remarked with reference to this that he 'thought it equally true, on the other hand, that to give a poor population like the Bengal raiyats the means of selling or mortgaging their tenures at pleasure was a certain means of making them improvident or unthrifty.' It was, therefore, in the interest of the raiyats, and not in the interest of the landlords, that this provision was abandoned by the Select Committee. The hon'ble member has stated in support of his amendment that the condition of the raiyats in places where the custom obtained was one of greater prosperity than in other places. But the question should be viewed in its proper light. In places where this custom has obtained, the institution has been brought about under the operation of the rule of the survival of the fittest. In such cases the institution must necessarily be suited to the requirements of the locality, and must, therefore, be productive of much good ; but to thrust upon a poor and improvident people the power to deprive themselves of their substance and homesteads, and of their means of living, is, I submit, not altogether consistent with the other provisions of the Bill. The Select Committee not only provided for a fee to be given to the landlord for his consent to the sale, but they also provided that the landlord could either accept the fee or veto the sale upon three grounds: *first*, that the purchaser was not a cultivator; *second*, that he was a bad character; and *third*, that he was an enemy of the landlord. If the hon'ble mover of the amendment had moved an amendment for recommending the insertion of a rule for free sale with these restrictions, I would have had no hesitation in giving my support to it; but, although I should have found no difficulty in supporting it, I should have thought it was a dangerous one in the interest of the raiyat."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"The Bill as it comes to us is the work of the Select Committee, who have carried out the wishes both of the Government of Bengal and the Government of India. I therefore think the onus is upon those who come here to advocate a change, unless it can be practically shown that the change is one for the good of the country. So far as I have followed the current of the decisions of the Bengal High Court, a mere occupancy-right does not carry transferability so far as Bengal is concerned. I think that the four corners of the present legislation are

enough for our present purpose without going either to the Dekkhan or other parts of India. I think that sufficient has been conceded on the lines of the Bill as it stood. If occupancy was not transferable according to the law as it was interpreted by the High Court, and if the Government of Bengal and the Government of India thought fit that legislation should not advance further, they had devised restrictions for the protection of the public. Whether it was the landlords or the raiyats who required protection, that was hardly the place where one could now go into the question of absolute transferability. It was too large a question. I think that the Council should remember that if the section now proposed were introduced a very large number of sections would have either to give way altogether or would have to be further hedged in by restrictions, which I think it would be very difficult at this stage to introduce. I will, therefore, oppose the motion."

The Hon'ble MR. REYNOLDS said:—"I agree with a great deal of what has been said by the hon'ble mover of the amendment, and especially with regard to what he said as to the additional value which would be given to the occupancy-right by the concession of the power of transferability. The question has been very fully and ably discussed by Mr. Field in a note to his Digest of the Rent Law, and his conclusion was in favour of declaring the occupancy-right transferable. I must add that I cannot altogether assent to what the Hon'ble Peári Mohan Mukerji said with reference to the precedents afforded by the Sonthal Parganás and the Dekkhan. I do not think they are cases in point with reference to Bengal. The danger of giving to occupancy-raiyats the power of transferability is the fear of the lands falling into the hands of moneylenders, and this is a real danger in places like the Sonthal Parganás and the Dekkhan, where the moneylending classes are an alien race, having no community of interest with the people. We have in the Sonhal Parganás moneylenders who are Bengalís, and in the Dekkhan the moneylending class are Marwáris; but that is not the case in Bengal, and I am still of opinion that with certain safeguards the right of transferability might have been recognized in Bengal without any danger to the interests of the people. But at the same time I am not satisfied with the form of the amendment; for instance, in clause (*a*) it is provided that where the custom of transferability does not exist, a fee of 10 per cent. shall be payable to the landlord. Such a fee, in my opinion, is too high, and the hon'ble member has not provided for cases in which the right exists by custom subject to the payment of a fee. Then the hon'ble member proposes that a gift shall not be valid unless it is registered, but he has not provided for the case of sales being made under cover of a gift; and above all there is no provision in the amendment for ensuring that occupancy-holdings so transferred shall continue to remain in the hands of the agricultural classes. Though I believe the danger of the money-lender's intrusion has been much exaggerated, I admit that there is some residuum of danger in connection with this matter, against which precautions should be taken, and in the present state of Bengal I should be sorry to see the right of transfer freely imported into the Act without any safeguard against the evils to which I have alluded. I therefore cannot support the amendment."

The Hon'ble MR. HUNTER said:—"My Lord, I had not intended to speak on this amendment, because I am much in the position of my hon'ble friend Mr. Reynolds. I think the amendment in substance good, but I am unable to accept the form in which it is put. To my mind there can be no doubt that the evidence before this Council—evidence which has been carefully gone into by the Select Committee—has abundantly established the fact that the sale of occupancy-rights is growing into an established custom. I believe that by leaving the sale to custom we are subjecting poor men, needy men, to a number of exactions, and to a number of very serious inconveniences during the process of sale. But while I feel very strongly that it would have been a great advantage to the raiyat if we could have given the effect of law to that custom, I do not see my way to accept the amendment in the form in which it has been placed before the Council."

The Hon'ble MR. GIBBON said:—"Much as I desire to see the right of transferability adopted and legalized, I must oppose the amendment. While I desire to see the right of transfer legalized, I wish also to see the just interests of landlords protected, and the country protected against the evils of land-jobbing: neither this evil nor the interests of landlords are protected by this amendment. Much as I desire to see the right of transferability adopted, it should, in my opinion, be adopted for the whole province, and not for Bengal Proper alone. To legalize transferability for Bengal and not for Behar will hereafter be looked upon as having prohibited it for Behar. The hon'ble member has given many reasons for desiring to give the right of transferability; but he has given no reason which is not equally applicable to the circumstances of Behar; if they apply to the circumstances of one province, they apply equally to both. If we legalize transferability in Bengal, not in Behar, it should be by a separate Bill. I am sorry therefore I must object to the amendment."

His Honour THE LIEUTENANT-GOVERNOR said:—"This is an old question which has passed through several stages of consideration up to its final abandonment by the Government. The hon'ble member who moves this amendment will not doubt that, as far as my own views go, I sympathize entirely in the position he takes. The recognition of the free right of transfer on behalf of raiyats having occupancy-rights would, in my judgment, ultimately be a great benefit to the country, though I am willing to admit that, as regards its present adoption, there is no question in which my own opinion has undergone greater modification than in this one. In our first proposal to the Government of India two years ago we recommended the adoption of the right of transfer throughout Bengal in the belief, which we thought sufficiently established, that the practice of transfer was generally prevalent; but later enquiries seemed to show that what might be safe in Bengal would not, under the peculiar conditions and circumstances of Behar, be safe there; and in our second letter we desired to confine the exercise of the power to the districts of Bengal Proper. But even as regards that Province the point which claims especial consideration is that the zamíndárs themselves have shown the strongest opposition to the acceptance of the proposal; and certainly I can speak from my own experience that, in all my interviews with zamíndárs on the subject of this Bill, no question has been more prominently brought forward and opposed than this one, and further that the opinions which have been expressed in non-official communications and in the writings of the Press have condemned the policy as one which is likely to be attended with serious evils in the transfer of lands from the hands of the agricultural classes to those who have no interest in agriculture. We have thus to take account of the fact that there is a strong outside hostility to the legal recognition of the right of transfer in this class of raiyats. I fully support the view taken by my hon'ble friend Mr. Reynolds that any reference to the case of the Sonthal Pargánas or that of the Dekkhan affords no parallel to the circumstances of Bengal. In the Sonthal Province there is an aboriginal people, rude, half-civilised and uneducated, amongst whom large numbers of money-lending Bengalís are settled; and to open the door to the transfer of occupancy-rights among such a people would undoubtedly lead, and has already led, to evil effects. But the parallel does not hold good where you have to deal with a people who are beginning to know the value of landed property and can use the discretion as to parting with it or not. Still after much consideration the safer view has prevailed that the introduction of any provisions like those which the hon'ble member has moved should not form a part of our present legislation; though in accepting this view we must all realize the fact that we do not thereby close the door to the growth of a system of transferability. The fact is that the practice obtains all over the country; it extends to a considerable extent in Behar; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district in Bengal is one which no one can dispute; it comes before us on the unquestionable authority of the Registration Department, and is admitted by the landholders themselves. Therefore, I think it is quite our wisest course to let the practice

develop itself, and in a few years it will be very much easier to recognise the practice from the fact of the custom having become established. In view of all these circumstances I would strongly press upon the hon'ble member to withdraw his amendment."

His Excellency THE PRESIDENT said :—"As a reference has been made to my connection with this subject, I should like to have an opportunity of expressing my own opinion upon it. In the first place, we have to consider the matter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of sale or transfer, and the Courts of Bengal, as I understand, have hitherto maintained this view. It is therefore a question as to how far we should be justified in giving the occupancy-tenant a right carrying a money value to which he has not hitherto been entitled by law. That he should have it by custom is a totally different question. It stands to reason when a landlord has allowed such a custom to grow up, when the landlord has permitted sales of occupancy-interests to take place, it is but fair and just that the actual tenant, who has paid consideration for the occupancy-right, should be allowed to dispose of it upon the same conditions as those upon which he bought it. Without, however, wishing to pronounce dogmatically upon this part of the question, I have to observe that when the matter was brought to my notice the Government of Bengal had already decided that the legalising of the custom was at all events not desirable in Behar. It was also decided that its application to Bengal must be hedged and restricted by various safeguards, one of which consisted of the right of the landlord to bar the transfer where the transferee was objectionable to him. Thus it became apparent that even its application to Bengal might be also questioned. I can quite understand that the hon'ble member who has moved this amendment should take a different view of the question, because I believe that he is more immediately acquainted with a part of the country where the raiyats are in a very satisfactory and strong position; and undoubtedly, where that si the case, transferability is not only a convenience, but works without injury to the raiyat and with advantage to the public. But, on the other hand, we must remember that if the amendment were to be adopted we should at once confer upon vast numbers of indigent men the right and the opportunity of mortgaging the land on the unembarrassed condition of which the salvation of themselves and their families depends. However, I need not enlarge upon this view of the question, because the remarks which have already fallen from the Lieutenant-Governor I think amply justify the view which has been taken of the subject by the Government of India. I think it right, however, to say, on behalf of myself and my colleagues, that if, at this stage of the proceedings, arguments had been adduced in favour of such an amendment as that which has been proposed by Mr. Amír Alí, we should have been quite prepared to give to them that attention which they deserve. But, so far from that being the case, even those other members of the Council who are disposed to look with an indulgent eye upon the principle in the abstract, announce to us that they do not feel themselves in a position to support it. Under these circumstances, we—I for one, and I imagine all my colleagues—feel that there is no reason whatever why we should depart from the conclusion at which we originally arrived."

The Hon'ble MR. AMÍR ALÍ then by leave withdrew the amendment.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that to section 25 of the Bill the following clause be added :—

"that he has defaulted to pay within fifteen days the amount of a decree for arrears of rent passed against him."

He said :—"Both the Rent Commission and the Government of India recommended the abolition of the provision for ejectment for non-payment of rent simply on the ground that it would be incompatible with the condition for free transfer of a raiyati holding; but now that the provision for free transfer has been expunged from the Bill, I submit that the permissive provision for

ejectment for non-payment of rent be inserted in the Bill. The power of ejectment has been enjoyed by landholders from 1793, and, notwithstanding all that has been said by some officers, I challenge not only strict enquiries but any reliable evidence of the fact that the power has been abused during such a long time. And when there is no evidence of that fact I submit that it will be inexpedient to deprive landlords of a right which gave them an effective remedy in cases of non-payment of rent. It acts as a threat on the raiyat against default and delay in payment of rent, and I think the power is essentially necessary to enable landlords to collect their rents with punctuality now that the provision of free sale has been done away with. It has been observed by my hon'ble friend Mr. Amír Alí in moving his last amendment that power has been given by the Bill to put up to sale a defaulting holding, but I need hardly inform the Council that it is no new power which the Bill has given to landholders; it is a right which they have all along enjoyed but which the Committee thought was of no earthly use to them, because when a man has the choice of either putting up a defaulting holding to sale or of applying for ejectment it will be in the interests both of the landholder and the raiyat that the landholder should apply for an order of ejectment and not for sale. An order for sale involves much additional cost on the raiyat in respect of the necessary processes of Court, such as the proclamation for sale, sale-fees, and so forth, and in the majority of cases it is found, as has been justly remarked by the Hon'ble Amír Alí, that the proceeds of sale does not cover even the cost of processes. The provision for sale as a substitute for the power of ejectment is liable to this further objection, that even when a sale has been effected it is in the power of the raiyat to apply for the reversal of the sale, and a suit to that effect may be carried on for years, and the question whether the sale was valid or whether it was invalid would not be settled till years after the sale was effected. In the meanwhile the purchaser has invested money in the land, and other rights have accrued; and if the sale is ultimately set aside both the raiyat and the landlord will be seriously damaged. I submit that in the interests of the landlord and that of the raiyat himself, the provision for ejectment contained in the present law should be maintained."

The Hon'ble MR. EVANS said:—"I do not feel justified at this stage of the proceedings in supporting a motion for allowing the old form of ejectment. I always had great doubts whether the change made in the Bill would be beneficial; but as this is one of the cardinal points in the Bill I do not think there will be any chance of the Council re-considering the matter, which has been settled and which has such great authority in its favour.

"I entertain very considerable doubts as to its working well. I think that, instead of having to resort to these execution-processes, the landholder should be able to ask the Judge, in cases where there was no bid or an insufficient bid, to stop the sale and make the amount payable within fifteen days. I have not made any substantive proposition, because I am not clear that the relief will be sufficient to justify my introducing any amendment of that kind. I feel that there are inconveniences to the zamíndárs, and I can only hope that it will work out better than the ordinary execution of money-decrees is working in this country."

The Hon'ble MR. GIBBON said:—"Had the hon'ble mover accepted the suggestion I threw out to him in Committee that the order for ejectment should act as a full acquittance of the decree, I would have given him my co-operation. The hardship in adopting the old law, allowing the judgment-debtor to be ejected if he does not pay the amount of the decree within fifteen days, lies in the fact that when he is ejected the decree still holds good against him, and he is still liable to pay the full amount of the decree. I accept the provisions of the Bill simply as the better of two evils, not as an effectual remedy. The provision in the old law which allowed the zamíndár to eject if the defaulter did not pay the amount of the decree was valuable only on account of the moral effect it had on the raiyat; and as such it was necessary, I think, to embody it in the Bill; at the same time the difficulties in the way of transferability which have been stated by the Hon'ble Mr. Evans are very true. I have

often found that nobody would bid at the sale of the raiyat's holding and the holding had to go back to the same raiyat. At the same time the difficulties stated by the hon'ble mover of the amendment are also true; process and sale fees are so exorbitant that the amount realized from a sale is often hardly sufficient to cover them. The remedy lies in reducing process and sale fees and in applying a rule of percentage on the amount of the decree or the amount of purchase-money realized."

The Hon'ble SIR STEUART BAYLEY said:—"I understand the hon'ble mover of the amendment to assert that the Rent Commission originally recommended this system of ejectment on the ground that, as there was to be a free transfer of occupancy-holdings, ejectment would be incompatible with it, and he also said that the Government of India had settled it on this ground. But I must point out that this was an entire mistake. Neither the Rent Commission nor the Government of India connected it with the question of free transfer generally. What they did connect it with was the fact that sale for arrears of rent was provided, which is quite different from the question of free transfer generally; consequently the fact of having removed free transfer from the Bill makes no difference whatever in the grounds urged both by the Rent Commission and the Government. I will read what the Rent Commission said:—

As an occupancy holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent. We have accordingly enacted (section 20, clause (*c*)) that no raiyat may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such raiyat and his landlord have contracted in writing that the raiyat shall be liable to ejectment for a breach thereof.

And they went on to express their dislike of the system of forfeiture. I think the hon'ble member will find also that the Government uses the same language. The hon'ble member will, therefore, see that the question did not in the least depend on the question of transferability generally, but particularly whether the occupancy-right should be sold for arrears of rent or not; and, as we have maintained the process of sale, we are justified in saying that we are carrying out the views of the Rent Commission, the Government of India and the Secretary of State, all of whom have held that where we have the right of sale we do not want also the process of ejectment. At the same time I may remind the hon'ble member, as I pointed out before when the question was discussed two years ago, that though evictions through the Courts were not frequent, yet illegal eviction was very frequent; and I at that time quoted an experienced Magistrate, Mr. Edgar, who had a return prepared of complaints preferred in his district on this ground, which amounted, if I recollect right, to some 500 in two years. The Government of Bengal had supported this statement. As a matter of fact it is not the action of the Courts in this matter which we dread; it is the threat of ejectment hanging ever over the head of the raiyat which paralyses his industry, and makes him an easy prey to extortion and oppression. It is this tremendous engine in the hands of unscrupulous subordinates which we desire to restrain. The hon'ble gentleman admits that the real use of ejectment is that it acts as a threat, and I think he said it had a very moral effect. We are agreed as to the power, but scarcely as to the moral effect, of the threat. He would wish us to believe that this power is desired in the interest of the raiyat. Such an interest I believe the raiyat and the raiyat's well-wishers would very gladly forego, but I can hardly suppose that my friend uses the argument seriously. That it is in the interest of the zamíndár I can understand, and if he puts it on that ground there is a fair scope for argument; but when he claims that it is in the interest of the raiyat that he should be ejected and the surplus value of his holding and improvement should go into the pocket of the zamíndár I do not understand. More especially I do not understand it as applied to the amendment in its present form. In order to give it even a semblance of fairness he should have supplied the omission which the Hon'ble Mr. Gibbon has pointed out; he has not put in any provision that ejectment in execution of a decree should be deemed to be a full satisfaction of a decree; he has left the raiyat liable for the amount of the decree even after the

landlord has got the land in his own possession and has got into his own pocket the value of any improvements effected by the raiyat on the land. The Hon'ble Mr. Evans has thrown out a suggestion that there might possibly be made a relaxation in the form of the section in case of the sale of the holding not fetching the full amount of the decree. That question was brought before the Select Committee and was discussed, but I do not see any amendment on the notice-paper concerning it. I may, however, inform the Council that one of the grounds on which it was felt to be unacceptable was this, that it would make it the landlord's interest in every case to prevent the raiyat's holding being sold for anything like its full value; if he could fall back upon ejectment without compensation when the price bid was low, it would clearly be his interest to keep the price low, and a powerful landlord would have little difficulty in doing this by keeping away other bidders; but the thing which strikes at the root of the amendment is this, that it is really unnecessary: ejectment is of necessity included in sale, it is merely a question of whether improvements should be forfeited also, for it is obvious that the landlord in the process of sale has a power of ejectment; he puts the holding up to sale, and if he does not get a bid he buys it for four annas or eight annas and the man is ejected. I do not think it necessary to go beyond this. On the main question I may say that we have intentionally and deliberately restricted the power of ejectment, because we think that at the best it is a dangerous power, and it has been part of the deliberate policy of the Government from the beginning of the rent question, from the despatch to the Secretary of State and his reply, to restrict ejectment in every way we can. For these reasons I shall vote against the amendment."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"After what has fallen from the Hon'ble Mr. Evans and the Hon'ble Mr. Gibbon I wish to ask His Excellency's permission to move the amendment in a modified form, namely, that—

'Ejectment under this section shall be in full satisfaction of all demands under the decree.'"

The Hon'ble SIR STEUART BAYLEY said:—"I think it is rather late in the day to raise that question now; it was raised and discussed in Committee, and the hon'ble member has deliberately moved his amendment without it. I do not think that it is quite fair to present a new amendment now in consequence of suggestions which have been thrown out in the course of the debate, but at the same time I do not wish to object to the amendment in this case being put."

His Excellency THE PRESIDENT allowed the Hon'ble Bábú Peári Mohan Mukerji to propose an amendment in the modified form, which he asked permission to do.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I rely on the statements which the hon'ble member in charge of the Bill has read from the report of the Rent Commission and the despatch of the Government of India to the Secretary of State, and it was those statements which I had in my mind when I referred to those documents. The statements may be differently interpreted, but in connection with the fact that the power given to the landlord to put up to sale a holding for which rent is due is not a new power, but one which landlords have exercised since 1793, if not from an earlier date, I think that no meaning other than what I have put on it can be given. The mistake of the Rent Commission and the Government of India lies in supposing that the power of bringing defaulting holdings to sale is a new power given to landholders. But that is not so. Then the hon'ble member has asked how the provision for ejectment can be in the interest of the raiyat. I have explained fully in the speech I have already made that when a sale is effected certain expenses must inevitably be incurred; expenses of application, expenses of proclamation, fees of sale, and so forth, must ultimately fall upon the raiyat; and if the sale-proceeds do not cover

them, the landlord has the right of realization by the sale of the goods and chattels of the raiyat and other processes; whereas the order for ejectment will free the raiyat from any such expenses; and if in addition to that it be conceded as an entire satisfaction of the decree in the execution of which ejectment is made, nothing will be more welcome to the raiyat, as it will save him not only from the expenses incidental to sale, but from all liability under the decree. I submit that in this modified form the proposal should commend itself to the Council."

The Hon'ble MR. EVANS said:—"If the zamíndárs are willing to put it in this form, I should be inclined to give preference to it, provided it was coupled with the further provision giving compensation for tenants' improvements. That, however, is a matter which will require careful consideration, but it seems impossible that at this late stage of the proceedings it can be accepted. As I said before, I should have been glad to support any proposal which would have the effect of modifying the rigour of the law, because the court-fees and process-fees swallow up the value of the property in dispute. From some reliable data which I have recently received as to the summary process of distraint for irrigation-dues, I find as a positive fact that in the majority of cases where the amount of the distraint is small the costs of process far exceed the amount to be paid. I feel that it is in the power of the Executive Government very greatly to diminish the evil by lowering process-fees, and I can only hope that in the interest of the raiyat the very warm anxiety displayed by the Government will induce them, having regard to all the circumstances, to use some means of reducing the cost of process. If that is done the raiyats will have a great benefit conferred on them."

His Honour THE LIEUTENANT-GOVERNOR said:—"The inconvenience of allowing fresh amendments to be raised in the course of the discussions has been forcibly exemplified in this instance. It seems to me very unreasonable that the hon'ble member should, after having gathered the views of other hon'ble members upon a question brought forward by him, raise a new discussion in an amended form in the hope of catching some votes in support of his proposal. Here we have been led into a long discussion as to the character and amount of process-fees. Instead of adhering to the amendment of which he gave notice, he raises a question on a point with regard to which the Council has received no notice. I shall certainly oppose the amendment. I think it is not convenient to review the subject in any modified form after the question has been thoroughly discussed and the proposal has been rejected."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to section 25 the following clause be added:—

"(*e*) that he has not paid his rent at the appointed time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that to section 25 the following clause be added:—

"that he has committed persistent waste by neglecting the repair of irrigation-works or caused the deterioration of the soil."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. I think a provision like this will be a necessary provision by virtue of the addition which has been made to section 23 on the motion of the hon'ble member in charge of the Bill. The Council has already decided that the raiyat should not have it in his power to deteriorate the quality of the land, and I think in all consistency we should see that some penalty should be attached to a breach of that provision. I think the form in which the amendment is put is the form which the penalty should take for a breach of the provision."

The Hon'ble MR. REYNOLDS said:—"I cannot support the amendment. It appears to me that a good deal of what the hon'ble member in charge of the Bill has said in speaking on the amendment in regard to eject-

ment for non-payment of an arrear applies as much to this amendment. The objection is to what the hon'ble member called the moral effect on the raiyat, not a moral effect in compelling him to do his duty, but in dealing with any claim of whatever kind made against him by his landlord. I do not think it can be fairly said that, because we have inserted in section 23 the words that a raiyat must not materially impair the value of the land, it follows that we should provide the penalty of ejectment as a proper penalty for a breach of duty in that respect. What the amended clause proposes might be a ground for damages or for an injunction, but I cannot admit that it will be a reasonable ground for ejectment, the landlord having his remedy of not being injured as long as the rent is paid and having the right to sell in default. Then the words proposed seem to me to be dangerously wide. It is not easy to say what is persistent waste, or that a man has neglected to repair irrigation-works without some definition of his duty as to such repairs. I do not think such a suit would be likely to be successful, but there is the fact that danger would arise from the moral effect such a provision is likely to have. The same remarks apply to the words 'deterioration of the soil'. We should, I think, leave the landlord his remedy by way of a suit for damages or injunction against the cultivator, but I am strongly opposed to the principle of suing for ejectment on such grounds."

The Hon'ble SIR STEUART BAYLEY said:—"What I had to say has been anticipated by the Hon'ble Mr. Reynolds. As I said before, it has been the deliberate policy of the Government of India to restrict the grounds for ejectment. On looking at Mr. Field's digest, I see that in giving the substantive law in the text that 'the raiyat shall not, without the consent of the landlord, materially alter the condition of the land held by him, and render it unfit for agricultural or horticultural purposes' the remedy is stated to be a suit for damages or an injunction to restore the land to its original condition. He says the conditions of good agriculture are not sufficiently understood in India to raise a question of this nature. The hon'ble member will recognize Mr. Field as an authority on a point of this kind; but, without basing my argument entirely on Mr. Field's authority, I think the importance of not permitting the threat of ejectment in every case between landlord and tenant is so great that when other remedies can be found we ought not to give such a power. I therefore think we ought not to accept this amendment."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendments that to section 25 the following clauses be added:—

"(*e*) that he has, without his landlord's written consent, sub-divided or sub-let his holding, or any part thereof, save as expressly authorized by this Act;

"(*f*) that he has by writing, or statement reduced to writing, disclaimed the title of his landlord before any public officer or Court."

The Hon'ble MR. EVANS moved that for sections 28 and 29 the following be substituted:—

"No instrument, whereby an occupancy-raiyat is bound to pay for land in which he has an occupancy-right a rate of rent in excess of the rate which was payable by him in the agricultural year next preceding the execution of the instrument, shall be admissible in evidence unless it is registered.

"No occupancy-raiyat whose rent has been enhanced in respect of any land in which he has an occupancy-right shall be liable to any further enhancement for fifteen years from the year in which his rent in respect of such land was last enhanced."

He said:—"It is with very great regret that I have to make many of the objections which I am about to make, because I recognise that a great portion of the matter I am objecting to is intended to give protection to the raiyat, and I am thoroughly desirous that the raiyat should be protected as far as it can be done by means of a workable scheme; and so far I am entirely at one with the views and objects which have moved the Government of Bengal in this matter, and have no desire to diminish in any way any protection which we

can give justly and in a workable form to the raiyat. What I fear is that in the form in which the section stands it will, as a matter of fact, be unworkable in practice and will create more mischief than it will remedy. Some objections may, no doubt, be raised to the amendment which I propose, but I have no kind of partiality for the particular form of my amendment as long as the matter is substantially dealt with in some form or other. We find, as would be expected with regard to a matter of this kind, that the increase of rent paid by an occupancy-raiyat with a fixed tenure must be, from the nature of things, either by decree of Court or by agreement between the parties; because, if there is a dispute between the parties, there is no means of enhancing the rent but through the Court, and if there is no dispute the parties settle the matter between themselves, as they do in regard to all other matters in which they are able to agree. With regard to the provision which we have made in this chapter for settling disputes which arise between landlords and occupancy-raiyats as to increases of rent, where the dispute is of such a nature that they cannot settle it without going into Court, I am entirely satisfied and have no objections to make. But it must be known that it is not desirable that the parties should be forced to go into Court when it is not necessary and when the dispute can be settled less expensively out of Court. We know that in this country litigation is costly, and in many cases leads to the ruin of one or both of the parties, and more especially of persons who are ignorant. As to the restrictions on settlement by agreement, there are very serious objections that occur to me. Section 28 prescribes that if enhancement by agreement is not made exactly according to the provisions of the Act, the result will be that it is void; that is to say, that the agreement, so far as the increase of rent is concerned beyond what the raiyat was paying the year before he came to an agreement, is absolutely and entirely void. The result is not that money so paid voluntarily under a void agreement is recoverable; no doubt the landlord will keep the money in his pocket, but if at any time he sues for rent at the enhanced rate which the raiyat has consented to pay, the raiyat will be able at once to say he has not to pay that amount of rent, because the increase of rent by agreement or consent is unenforceable. The contract is void. This section goes on to say that it shall be void in all cases—that is the effect of it—excepting in cases provided for in section 29. And it embodies this condition, that the agreement must be in writing and registered; that is to say, it must be a registered contract, and you cannot register a contract unless it is in writing. The next point is that the rent as it existed the year before must not be enhanced by more than two annas in the rupee or 12½ per cent.; and thirdly, the contract must fix the rent for a term of at least 15 years. That is to say, it prescribes that every contract which enhances any man's rent, which binds him to pay a higher rent than the year before, is *ipso facto* void if it does not contain a statement that the rent is fixed for 15 years. The contract is void by the absence of that formality. The next provision is that the registration of the contract shall not be ordinary registration, but must be a registration under this section. The section provides that—

'The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 96 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.'

"Practically, as far as I understand the provision, it directs that the registration of all contracts which bind a raiyat to pay more rent than he paid the year before should be a special registration. Whether the provision that the registering officer shall ascertain all these things is directory or imperative is not very clear, but it is apparently contemplated that the registration shall be special. But later on it is provided that the Local Government may make rules for the guidance of the registering officer for making registrations under this section; so that it does seem to be some kind of special registration, and therefore documents registered under the ordinary law of registration will not be considered to be registered according to this section, and such registration will be void. The Council will see what difficulties will arise on that point when I explain what the difficulties are which beset it. Having explained to the Council that unless all these conditions are fulfilled a contract is void, I shall now consider what is the practica

effect of them in two classes of cases. The first class of cases is that of a very large number of raiyats in this country who have no written engagements for their rent. The Council is aware that it is provided in the Permanent Settlement Regulations that the zamíndár shall give a pattá and the raiyat shall give a kabúliyat, and that engagements shall be in writing, and that the writing shall be in a certain form. The Council is also well aware that it was found absolutely impossible to bring about these results. The penalty prescribed was that the zamíndár should be non-suited if he did not produce an engagement in the prescribed form. So far as a form is prescribed, it is repealed by the Regulation of 1812, and so far as there is an authoritative order that engagements shall be in writing, it has remained a dead-letter in almost every part of the country from that day to this. In the Act of 1859 the provision is kept up that either the landlord or the raiyat may claim a written engagement, but it is optional and has very little effect; and there are still large tracts of country in which written engagements, especially amongst the poorer and smaller classes of raiyats, are not as a matter of fact in writing. The reason why this provision has had no effect is that there is a considerable mass of raiyats who have a rooted and traditional hatred of putting their names to any kind of document. Now, even if the Council is prepared to enact that every engagement for rent should be in writing, which no one has suggested, I do not see how we can possibly hope, if raiyats have this feeling, that any legislation we can make will secure engagements being in writing, and I do not see how we can secure that variations of unwritten engagements should be in writing. If an engagement is not in writing, how can any variation of it be expected to be in writing? I think we may take it as certain that people who do without written engagements will continue to do without them, and that we shall not be able by any Act to drive them to have written engagements. Then what is the position in case the Bill stands unamended? The engagement to pay a certain rent is unwritten, and the variation by which a raiyat agrees to pay a larger amount of rent will also be unwritten, and so long as there is peace between the parties the raiyat will go on paying his rent. But it may be that years after the enhancement of rent has been made the landlord or his successors will have to institute suits for arrears of rent, and then the tenants, if well advised, will plead that the enhancement was made after the passing of this Rent Act, and the enhancement is therefore void *ipso facto*, because it was not made in writing. They may say, 'It is true we have paid the enhanced rent for many years, but still the Court cannot enforce it; therefore we demand to be put back to the position in which we were five, six or ten years before the enhancement was made.' I think every one will agree that that is not a desirable state of things; and the remedy is simple, namely, to allow things practically to remain in the position in which they are now with regard to oral engagements. At present there is no particular law on the subject, but, owing to the impossibility of proving an oral agreement to pay enhanced rent, the zamíndár has to prove that the raiyat has actually paid the enhanced rent for some years. He will not go into Court for a decree for enhanced rent on the ground of an oral agreement. But what happens is this. When a raiyat has orally agreed to pay an enhancement rent and has paid it for two or three years, the landlord, when he sues for arrears, proves that the raiyat is now paying a certain amount of rent which he had agreed to pay, and, having paid that rent for some time, it is abundantly clear that he must have agreed to pay at that rate; so the Court gives a decree. The reason why he gets a decree is that there is no law which makes oral agreements void. If you make oral agreements void the result will be that the raiyats will have the defence which I have stated. I do not think it is in accordance with the principles of equity or of natural justice to allow such a defence. The English Statutes which provide that certain engagements shall be in writing, such as the Statute of Frauds, were passed for purposes of public policy; but we find that in those Statutes exceptions are made in favour of contracts part-performed. I think it would be unreasonable to make a provision to this effect without any limitation or exception whatever, so that even 20 or 30 years after an enhancement is made and cheerfully submitted to by the raiyat, he may show that the original engagement was void, and he can then revert to the

position in which he stood before that time. I take it that the principle which was found necessary in England that part-performance should be a substitute for the formalities must be recognised because of the ordinary way in which mankind transact their business, and because of the way in which certain classes of raiyats make their engagements, and that some provision ought to be made in the Bill to provide that part-performance of the contract shall be sufficient as proof of such an agreement having been made. I have not embodied that in my amendment, because I thought it better to propose an amendment in wider terms. But I wish it to be clearly understood that it is not my intention to place the raiyat in a worst position than he is in now in regard to oral agreements. I would be perfectly willing, although it is not contained in my amendment, if the Council think it necessary, in order to meet the real difficulty which I have pointed out, that they should prescribe how much part-performance of an oral agreement should be sufficient. I mean to say that at any rate I would not be disposed to think that an allegation of the payment of one month's rent would be sufficient to satisfy the Court. No Court would be satisfied of the existence of such an agreement unless the raiyat had paid at the enhanced rate for one year at least. It would be a matter for the Council to consider whether the carrying out of an agreement for one or two years should be deemed sufficient instead of a written contract. If persons will go on without written contracts, you cannot force them to have written contracts; then you must provide that there must be such sufficient performance of the unwritten contract as to satisfy the Court that the arrangement has really been made and, what is more, that it has been acted upon. I have always considered that the fact of a raiyat having paid rent at an enhanced rate for one, two or three years without demur is much stronger evidence of such an agreement having been made than a registered document; because documents are often collusively given. I have had cases in which the raiyat has said that he gave a registered document because the landlord had paid him something to do so in order to injure another man, and they have sometimes actually produced witnesses to prove that they had been told that they would not have to pay increased rent under the registered contract; but when we find that a man has actually paid at the enhanced rate for two or three years, we may surely be satisfied of the reality of the transaction. We shall have an unworkable scheme if we keep the section as it is now, and I apprehend that it will have to be amended some way or other.

"Then, having told the Council of this difficulty, I come next to consider what will be the effect of this section on written engagements. First, I will observe that I do not think that we shall be able to induce the people of this country to change their common forms of pattá and kabúliyat. I do not anticipate that we shall be able for many years to come to get the people to deviate in the smallest degree from their common forms. At present I seldom or never see a kabúliyat in which the raiyat has stated 'My rent in the last year was so and so; I have now agreed to pay the further sum of so and so.' There may be a few such agreements of that kind, but I doubt if it is ever done; the tenant will go on giving pattás and kabúliyats in the same way as before, containing no statement except that he agrees to pay a certain rate of rent for certain land. The raiyat will give a fresh kabúliyat stating the amount he has to pay under the new agreement, and stating nothing else. The first effect of such written engagements will be that they will be void unless the kabúliyat contains in itself a statement that the rent is fixed for fifteen years. Pattás and kabúliyats will not as a matter of fact contain that provision, and why should you make it void because it does not contain that statement? I do not object to the term of fifteen years, but you have made it imperative that it should be so stated in the contract, and it will follow that when the enhanced rate is attempted to be enforced the raiyat will say that the kabúliyat which he has given is *ipso facto* void, because it does not state the term of 15 years for which the enhanced rent is not to be altered; it may state no term or it may state a shorter term. Instead of making that an imperative incident in the form of the pattá and kabúliyat, the object will be very easily attained by

merely stating that the legal effect of the agreement shall be that the rent cannot be enhanced again for fifteen years.

"Then I come to a further matter, namely, registration. I feel that there is considerable force in what Mr. Hennessy and others have said that it is very hard to compel registration of contracts for such small amounts, that the registration-fees are very high and the distances at which the registration offices are situated are great. But desirous as I am to protect the raiyat, and admitting that registration does give him some protection against false documents which a gumáshta may have manufactured and to which he may have affixed each man's mark (for in most cases the raiyats cannot write), therefore, although it is in many cases very inconvenient to cause the registration of documents of such small amounts, amounting in some instances to an enhancement of only two annas, on consideration I think it is better to modify rather than abandon this rigorous provision, and the practical working of my proposal would be this, that, although contracts may exist between the parties, no contracts at all will be produced in Court. And with regard to these small raiyats, they will be in the same position as if the engagements with them were unwritten, because, although there may be written engagements, they being unregistered will not be admissible in Court; therefore the Court will simply have to look to the prior rate of rent paid. Although we are breaking the ordinary rule that registration is not necessary in respect to small matters, it may be worth while to do so; but in going this distance I am going a very considerable way. It is because I will not consent, so far as I am concerned, in any way to participate in the formation of any scheme that will not work that I am making these observations now. I am willing that contracts, if in writing, should be registered, but if there are no registered or written engagements part-performance should be considered sufficient.

"I come to a further objection. I pointed out that the section appears to require special registration; that the registering officer has to make special enquiries under sections 74 and 75 of the Bill as to which the Government has to prescribe certain rules; so that if the contract is not registered under this special registration it will be held that that omission renders the written instrument void. As I have said, a pattá or kabúliyat will not shew any enhancement at all. The result will be that these pattás and kabúliyats will be documents some of which will be compulsorily registered under the present Registration Act and some of them under this special registration. Every prudent man will take care, if a contract is of sufficient value to make it worth while, to register it, and if he does not do so he will have to prove part-performance. If it does not state any enhancement, he will register it in the ordinary form. Then if it does create a liability to pay a higher rent, though it be not so stated, will it be void because it is not registered in the special form? If it is not to be void, that should be specially stated in this section. Then the registering officer is directed to hold an enquiry under this section; first, whether any abwábs are included in the document. Considering that abwábs are illegal and the Courts will not enforce them, what is the use of compelling the registrar to see that the kabúliyat does not contain any provision for the payment of abwábs? If we are going to do this with regard to pattás which bind the raiyats to pay more rent, why not make the same provision with regard to every pattá? Why should we not provide that no kabúliyat shall be registered which has a provision for the payment of abwábs? The answer is that if it does contain such a provision the Courts will not enforce it. I am speaking of the difficulties which will increase the cost of registration. The registering officer has also to hold the enquiries stated in section 178. That section contains all the restrictions in contracts which we have thought it necessary to make under the Act, and again I say that whenever a contract is brought into Court and it appears to the Court that any of the provisions of the Act is contravened, or that the contract contains covenants contrary to section 178, such covenant will be declared by the Courts to be void. But we are not content that they shall be declared void by the Courts; we wish to prevent a tenant from signing anything until long enquiries have been made on difficult questions of fact as required by section 178. The registering officer will first have to ascertain the fact whether the raiyat

is an occupancy-raiyat at all; then he will have to go into several other matters, one of which (sub-section (3), clause (*a*)) is as to whether the contract takes away the right of a raiyat to transfer or bequeath his holding in accordance with local usage; he has to enquire whether there is a local usage, and if that usage is contravened; but that is one of the matters very much in dispute in some parts of the country. Then section 178 provides that nothing in the section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land; so that if the lease appears to have anything to do with waste land he will have to satisfy himself that it is *bonâ fide* for waste land only, and then he will allow a relaxation of some of these conditions. I do not think that all these enquiries are necessary; they are exceedingly well meant, and I entirely sympathize with the objects of His Honour the Lieutenant-Governor, and my very deep respect for his judgment and knowledge renders it painful to me to differ from him. Still when I see these difficulties I feel I shall be neglecting my duty if I avoid pointing them out so that we may make such provision as may be necessary. Considering the great difficulties in regard to registration, you are making it more difficult and more expensive, because the registering officer may keep the parties dancing attendance upon him for weeks together because he is not satisfied as to the existence of certain local customs and other matters with regard to which he is required to satisfy himself. And then, when all these investigations are done, what is the effect? All the registering officer has done goes for nothing, because when documents which are required to be registered are taken into Court the raiyat is at liberty to prove that the document does contravene the provisions of the Act; and if he can prove that he can afford to say 'I told the registering officer a number of lies and so satisfied him, but I can prove by indisputable evidence that as a matter of fact the contract does contravene certain parts of this Act'; and the result will be that all the investigations of the registering officer will be perfectly worthless and the matter will have to be fought out in Court. I therefore think it will be better and sufficient as regards these matters to enact only that written contracts shall be registered, which is a very great protection. I do not mean to say that it is absolute protection, because nothing is an absolute protection. You have for instance cases of false personation of the raiyat, though that is rare. There are no laws under which it is not possible to commit fraud if a man is willing to go in for perjury, conspiracy, forgery and false personation. If such things are resorted to, they are occasionally successful, but what really and in all ordinary cases prevents the commission of such acts is the strong arm of the criminal law and the heavy sentence of transportation for life. I object to all these expensive extra processes of registration. If a pattá is in the ordinary form and does not disclose the fact that it enhances the rent, are we prepared to declare it to be void or not? If not, that is a fatal objection to the whole scheme of special registration.

"These are the general objections which I have to the section, and I think they may all be met just as well by something else as by the amendment which I have put on the paper. My amendment is no doubt apparently defective in that it does not contain any provision with regard to part-performance, but the practical result will be much the same. If the Government of India is disposed to meet the point with regard to unwritten engagements being admitted on proof of part-performance, that would be sufficient. And with regard to written engagements, by not providing any particular form in which they must be made and making the fifteen years' term a mere statutory provision for enhancement, it will be found to work better, and it will meet my general objections to the section.

"There remain only a few remarks which I have to make upon the particular question contained in clause (*a*) as to the restriction upon enhancement, namely, that it shall not be more than two annas on the rupee. I have already said so much about it in the general observations I have made when the motion for the consideration of the Bill was before the Council that I do not propose to add very much to what I then said. I pointed out that there are two or three classes of cases in which it will be impossible to impose such a

limit of enhancement in defiance of justice and common sense. There are certain well-known cases in which it is inexpedient at any rate that a limit should be imposed. Where the enhancement is merely on the ground of rise of prices, and where there has been an enhancement within the last 10 years, I do not believe that enhancement of more than two annas in the rupee could be got, and I think two annas may represent what is ordinarily obtained in such cases; but there is a very large class of raiyats who are allowed to sit on land on low rates in consideration of cultivating a particular kind of crop, and the landlord ought to be able to say to them 'If I cease to make you cultivate this particular kind of crop, what would you give for the land?' and we know that in such cases enhancements of 50 and 100 per cent. and more are common. The zamíndár, sooner than fight a large body of raiyats and incur the large expenses incidental to legal proceedings, will in many cases take one-half of what he would be entitled to if he took the raiyats into Court; and if an enhancement of 25 per cent. instead of 12½ per cent. were agreed to between the parties, what would be the necessity of compelling the landlord to sue? Under this clause the zamíndár must put them into Court. The raiyats will come in and say 'You are our father and mother and take an enhancement of 25 per cent.'; he will say 'I cannot do so under the law, but you may enter a consent decree for 25 per cent. with costs.' There are large numbers of raiyats who have for some reason or other been allowed to sit at low rates and are legally liable to an enhancement of more than 12½ per cent. besides the special classes I have mentioned, and it is unreasonable to prevent their settling with their landlord out of Court. I feel certain that it will be better to strike out the two annas limit and to leave the parties to settle among themselves. The self-interest of the raiyats might be trusted to prevent their giving any more than they think the zamíndár will get. But when the raiyat has come to the conclusion that he will lose his suit and the zamíndár will get large enhancement, is it wise to prevent him compounding the matter for a comparatively small enhancement? I know it is strongly argued that the raiyats are in need of protection, and I have said what I had to say on that subject on the last occasion. The raiyats, as we have seen, have the power to combine together and fight their landlord, and in many cases they will do so when they see a chance of success. But when they see that their neighbours have failed they will say 'The Courts are very expensive and uncertain, and we will give an agreement sooner than take the risk', and it is their interest to do so; but you say 'You shall not do this; it is better for you to go to Court'. Is the Council quite certain that it is a better judge of what is best for the raiyat—as to whether he should go into Court or not—than the raiyat himself? I think as regards that matter the raiyat is really the best judge. While I would seek to protect the raiyat in every way which is for his benefit, I would decline to put in something which, though it is intended for his protection, will work more mischief than it does good, and will not as a matter of fact prove to his advantage. If the Council will not come to the conclusion to omit the 12½ per cent. limitation upon enhancement, I certainly will ask that some provision may be made for some of those cases in which raiyats hold at specially low rates in consideration of cultivating particular crops."

The Hon'ble Bábú Peári Mohan Mukerji said that, after the eloquent speech of the learned and Hon'ble Mr. Evans in support of the motion, he had very little to say in support of it. The provision for a registration of engagement, which provided for the payment of enhanced rent would be a very great hardship upon the raiyats themselves. Their trouble and expense and the hindrance of their daily avocations would not be the least of these inconveniences. One should have supposed that in a matter like this the Council would be guided in the direction in which the present law had been found by judicial decisions to be effective. But he could challenge hon'ble members present to point to any judicial ruling saying that the absence of the provisions like those contained in sections 28 and 29 had led to hardships. On the contrary, the ruling at present supported the view which had been so eloquently maintained by the hon'ble member. He would read a decision given by Justices White and Maclean in a case in which the zamín-

dár was allowed to give evidence of a verbal agreement to pay enhanced rent on the part of the raiyat. The following was the opinion:—

"A verbal agreement was proved in the Lower Court to have been made between the defendant and the lady's agent, and this document was put in evidence to meet the defendant's objection about the extent of his holding and the rate of rent. The Lower Appellate Court has treated this document as a lease, or agreement for a lease, and consequently held that he was not at liberty to admit the verbal evidence which was produced in the first Court. I am unable to concur in the view taken by the Judge of the document. In my opinion it amounts to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement are true, and consequently the document requires neither to be stamped nor registered."

The Hon'ble MR. MANDLIK said that the question now brought before the Council by the Hon'ble Mr. Evans was one of two conflicting principles. If ample security was provided to the raiyats by means of registered contracts, a great deal of litigation could be avoided. While he was so far in favour of the amendment, he could not discuss the new provisions properly until they were duly brought before the Council in writing.

The Hon'ble MR. REYNOLDS said that this was one of the most difficult questions with which the Select Committee had to deal, as on the one side there was no object to be gained in driving the parties into Court, and it was very desirable that they should be left to make their own arrangements; and on the other hand there was a mass of evidence to show that if no restrictions were put upon contracts out of Court, there was hardly anything to which a raiyat could not be got to agree. A number of instances had been given in the papers before the Council from which it was clear that the raiyat could not be considered a free agent in making a contract with his landlord, and that if he signed the agreement he did not really know what he was about. For these reasons the Select Committee had decided that no enhancement out of Court should be legal unless agreed to by a registered contract, that the rent must not be enhanced so as to exceed two annas in the rupee, and that the period must be fixed at 15 years. The Hon'ble MR. EVANS considered that such a rule would lead to difficulties both with regard to raiyats who had no written engagements and to those who had such engagements: and that there were certain classes of cases in which the two annas limit would be unreasonable, especially cases in which raiyats held at low rents in consideration of their cultivating particular crops.

With regard to this point MR. REYNOLDS might refer to the report of the Behar Rent Commission. The members of that Committee were practical men, who must have been fully conscious of the objections which might be urged against their proposals: but they were unanimous in recommending that no enhancement out of Court should be allowed except under a registered contract. A similar provision existed in the present law in the North-Western Provinces. Under section 12 of Act XII of 1881, there could be no enhancement except under a registered contract, or by suit in Court, or by order of a Settlement-officer. He thought that when these facts were taken into consideration it could not fairly be said that the provision for requiring registered contracts would present insuperable practical difficulties.

Then, as to the form of the contracts, MR. REYNOLDS was not sure that he had understood the hon'ble member's objections on the subject of registration. It was not contemplated, in MR. REYNOLDS' opinion, that there should be anything which could be called special registration, or that the registering officer should be bound to make any detailed enquiries. It was only intended that the registrar should satisfy himself that the contract was in accordance with certain plain provisions of the Act, and that the raiyat understood the terms of the contract, and entered into it as a free agent. But MR. REYNOLDS would offer no objection to the striking out of sub-sections (2) and (4) of section 29 if it were thought that this would simplify the proceedings.

The hon'ble member went on to refer to the two annas limit, and he remarked that this limit would operate unfairly in certain classes of cases, and

that it would be better to allow 25 per cent. out of Court than to drive the parties into Court. MR. REYNOLDS believed, on the other hand, that there was great danger in legalizing large enhancements out of Court. If the landlord wanted a greater enhancement than two annas in the rupee he ought to be required to submit his claim to the decision of a Court. If there was a practical difficulty in any case, it would be in regard to the cultivation of particular crops, and in regard to this MR. REYNOLDS thought it would be enough to make special provision for cases of existing contracts under which raiyats might be holding at specially low rates in consideration of their cultivating a particular crop. The provision need not extend beyond existing contracts, because in future it would be in the landlord's power to let the land at the full rate, and to grant a reduction so long as the particular crop was grown.

Then, reference had been made to what were called amicable agreements, where no written contract existed at all; and it was proposed to recognize these as binding if they were supported by proof of part-performance. MR. REYNOLDS thought that such a provision would go far to diminish the value of the section altogether, and would allow enhancements to almost any extent out of Court. He believed that the proposals of the hon'ble member, even with the modification which he understood him to be ready to make, would have a very injurious effect on the section relating to enhancements and on the controlling power which it was intended to exercise in the matter of enhancements out of Court. If hon'ble members doubted whether the section, if passed into law in the form in which it came before the Council at present, would meet all the circumstances of the case, he would ask them to remember that it might be amended hereafter, and he urged that for the present it would be better to allow the section to stand as it was, and to maintain the principle, which had been already enforced in the North-Western Provinces, and which was recommended by the Behar Committee, that the rent of the occupancy-raiyat should not be enhanced except by a registered contract or a suit in Court. If the arguments on both sides were taken into account, he believed that there was far more danger in such an amendment as had been suggested than there was in leaving the section as it stood. He therefore hoped the amendment would not be accepted.

The Hon'ble MR. AMÍR ALÍ said that he was opposed to the amendment proposed, on the grounds which he had already pointed out in his remarks on Monday last. The two-annas limit was a necessary one. The raiyat can hardly be supposed in the majority of cases to be in a position to hold his own against the zamíndárí influence. In many places the demand for land was so great that the raiyats were anxious to agree to any terms; and whether they were able to pay the enhanced rents or not, it was enough for the zamíndárs to show a high rental on the village-papers. If the two-anna limit would drive the parties into Court, then, he would contend, that the four-anna limit on enhancements in Court should be restored. As regards the objection on the ground of the difficulty of registration, that seemed to him to apply to all cases of registration. Part-payments should not be presumed to be a proof of an agreement; for that would simply leave the matter where it now was.

The Hon'ble MR. GIBBON said:—"I must say I concur in all the arguments which have been brought forward by the Hon'ble Mr. Evans in condemnation of the section as it stands in the Bill, but I go further. I disapprove altogether of the policy of restricting amicable settlement of the rents or of laying down the conditions or terms under which landlords and tenants shall be compelled to come to an amicable settlement amongst themselves. The Hon'ble Mr. Reynolds has quoted the proceedings of the Behar Rent Commission with approval. I was a member of the Behar Commission and concurred in the findings of the commission but on a reference to the proceedings of the Committee it will be found that they never attempted to lay down the terms or conditions under which landlords should come to a settlement with their tenants. They had simply declared that the mutual arrangements to be come to between landlord and tenants should be in writing and registered, and I

maintain that that is the correct solution of the question and the one which should be arrived at by this Hon'ble Council. The framers of this Bill have taken away the present procedure of issuing notices of enhancement through the Court, which is a cheap and easy process for bringing pressure to bear on the tenants to enhance their rents. It is therefore no longer necessary to place such restriction on amicable settlements as is now being provided under the Bill The whole purport of this portion of the Bill is to force the landlords and tenants into the Court. If parties are to be forced to settle their affairs through the Courts, they should be settled free of expense. This I deem to be an impossibility. Why put parties to the expense of going to the Court when they do not wish to go there? The restrictions imposed by the Bill are useless, obstructive and unnecessary and can and will be evaded by the bad men among the landlords. Take for instance an application under section 158. If a landlord applies to have the rents, terms and conditions of a holding declared, and the tenant elects to declare that he is holding at an enhanced rent, what Court in the world would declare that his proper rent is a lower one? It can also be evaded by an amicable suit. I may be allowed to say that I equally object to the amendments of the Hon'ble Mr. Evans. The true solution of the difficulty is, as proposed by the Behar Commission, that whatever agreement is come to should be in writing and registered, be the conditions what they may."

His Honour THE LIEUTENANT-GOVERNOR said that he was bound to recognise the temperate spirit in which his hon'ble and learned friend Mr. Evans had brought forward proposals on which evidently he felt very strongly. The hon'ble member had placed before them arguments against written contracts and the registration of such contracts and the particular limitation of enhancements out of Court with all the legal force and acumen, with which, as they all knew, he was so well accustomed to plead in Courts, and HIS HONOUR did not at all undervalue the force of his logic. But HIS HONOUR could not agree in all that had fallen from the hon'ble member on these points. He understood the hon'ble member to say that it would be practically impossible to enforce the limitations of enhancement out of Court to two annas in the rupee, and he apparently wished to maintain that parties should be left to make their own arrangements without any such interference on the part of the law.

That kind of argument might be reasonable enough in England, where parties to contracts in such dealings met on something like an equal footing, and might be left to look after their own interests: but he thought it was asking the Council too much to believe that parties here in India were at all in an equal position. All the facts were against that supposition. The Hon'ble Mr. Reynolds had given an accurate statement of the case, and, if there was any necessity to add evidence in support of his contention, HIS HONOUR could adduce a great deal in support of the fact that in matters of this kind the raiyat was placed every day at a great disadvantage and was justified in claiming protection from the law. From the evidence taken in the Behar Commission, it was found that the raiyat might be regarded in the position of a "minor," that is, of one who could not be left to his own intelligence to enter into a contract. If there was one principle more than another upon which the Council had been agreed from the very commencement of this legislation, it was that a proved necessity existed for imposing a limit upon the zamíndár's demand. The raiyat was not a free agent, and from documents produced in this Council last year it was shown that he was constantly compelled to sign agreements which would have been incredible if the papers themselves had not been produced. What was true of Behar in this respect was notorious from the cases which had come up from Mymensingh, the 24-Parganás, and in fact from all parts of the country. It must always be borne in mind that in the Bill as it had been drafted the limitations of enhancement out of Court in no way deprived the landlord of his right to get a higher rent if he was justly entitled to it. In enhancements by suit no limitation had been imposed; and if the zamíndár had grounds for thinking that he should get more by way of enhancement than two annas in the rupee or 12½ per cent. upon the existing rent, let him take the case to Court, where there would be the assurance that the facts

on both sides would be fully examined and a decision passed after the sifting of all the evidence. Even the hon'ble member (Mr. Evans) admitted that a 12½ per cent. enhancement was a reasonable increase, and his plea was only for exceptional cases But such hard cases might be otherwise provided for without infringing the principle, upon which section 20 was based, that where there is not the guarantee of fair dealing which the control of the judicial Court afforded some positive check must be put upon excessive enhancements out of Court. His Honour therefore considered some such provision as this was absolutely necessary to regulate enhancements, and that it should form part of the Bill.

The Hon'ble Sir Stuart Bayley said:—"It is with great regret that I have even in appearance to oppose the motion of the hon'ble gentleman opposite. In all the multitudinous points that have come before us in Committee it has been my good fortune almost invariably to find that there was a substantial agreement between us; and even on this question I trust it will be found that our divergence is more apparent than real, or at all events that the alterations I am prepared to make will go a long way to reconcile my learned friend to these clauses. The section is, in the opinion of some, one of the most important in the Bill. This view, for the reasons given in my opening speech, I am unable to share, as I think the effect of the section must be more indirect than direct. But if not one of the most important, it is certainly one of the most debateable sections, and one about which I have had extreme difficulty in making up my own mind—a difficulty by no means lessened by the very divergent views we have heard expressed on the subject in debate.

"To turn now to the actual objections taken by the hon'ble member. These I find to be partly to the form and partly to the substance of the section. So far as they refer to the form, I could wish that they had been brought forward at an earlier stage in order that I might have consulted with him at leisure as to the best way of meeting them. He objects to the form, if I understand rightly, because the section involves a special system of registration, and the specification of certain conditions in the deed; and therefore a deed of enhancement which has been registered in the ordinary way, and which fails to specify these conditions, as for instance that it is to be in force for 15 years, is invalid, and it is doubtful even if rent collected under such a deed would not be an illegal exaction. Well! on these points I am quite prepared to alter the section so as to meet his objections. The fact is that the clauses which provide for comparison and examination by the registering officer are a survival of the section of the original Bill which provided for the approval of these contracts by a Revenue-officer. It was the intention under the Bill as it now stands that they should be registered in the ordinary way by ordinary agency, but in view of the objections pointed out by my hon'ble friend to the retention of the special conditions and form of registration, I am glad to adopt the suggestion of Mr. Reynolds that the sub-sections providing for these should be abandoned.

"Next I come to an objection which is one rather of substance than of form, though it partakes of both characters. It is directed against the provision that all enhancements by contract must be in writing. The objection is that as a matter of fact in nine cases out of ten such contracts are not reduced to writing, still less are they registered, and if they are written they rarely refer to the old rent, but generally take the shape of a fresh pattá for a specified term of years. The hon'ble member very justly urges the impossibility of changing the immemorial custom of oral contracts by a stroke of the pen, and points out that the effect of the law will be that a raiyat having orally agreed to pay an enhanced rent, and having given practical effect to the agreement, may at any future time—ten, fifteen or twenty years hence—turn round and, by showing that the rent in 1884 was so much, effectually meet his landlord's claim for arrears, because the latter cannot produce a registered contract enhancing the rent subsequent to 1884, and the raiyat might even possibly sue him successfully for illegal exactions.

"I cannot deny the force of these objections. I had myself supposed that while this section would effectually bar a suit for enhanced rent, if not based on a registered contract, it would not have the effect of overruling the general presumption that existing rents are fair and equitable, and that the Courts in

the case supposed, finding satisfactory evidence of a rent having been paid for a number of years, would presume that rent to be fair and equitable, and would not go back to enquire what the rent was in 1884; but I am informed authoritatively that Mr. Evans' construction of the Bill as it stands is correct, and that the effect would be as he supposes.

"Now the Government and the Select Committee do undoubtedly attach immense importance to getting these contracts reduced to writing and registered. I do not deny the difficulty, but I feel that if this difficulty can be overcome, not only will all rent litigation be reduced in quantity and simplified in quality to an incalculable extent, but the educational effect in enabling the raiyat to understand and maintain his rights will be enormous. For my own part I attach more weight to this educational or indirect effect of the section—a great deal—than I do to its direct effect. For these reasons I fully sympathise with the Government of Bengal in their desire to give special prominence to the principle that all contracts for enhanced rent should be in writing and registered. But in asserting this principle I do not think we should overlook the disturbing and immoral effect of allowing the raiyat to repudiate years hence the oral contract which he has accepted and carried out regularly and continuously. My hon'ble friend Mr. Reynolds has pointed out that in the North-Western Provinces a raiyat's rent can be enhanced by agreement, only if that agreement is written and registered. This is true, but the registration in the North-Western Provinces is carried out by the establishment which is especially organised for recording and registering the rights of every raiyat in the country. The enhanced rent would in any case have to be recorded in the Government registers kept by this establishment of village accountants, and it involves but little more trouble to have the agreement itself registered by the same machinery. In Bengal we are, most unfortunately, destitute of this machinery. We have no patwáris, save in Behar, and there we have only a very demoralied s kind of patwárí, unchecked and unsupervised by the kánúngo who safeguards the institution in the North-Western Provinces. The conditions therefore are essentially different, and no analogy can be drawn between the facilities which exist for the registration of such contracts in the neighbouring province and the difficulties which must attend it in Bengal; nor do I think this argument justifies us in refusing to provide a remedy for the very serious objections which Mr. Evans has pointed out to the effect of the section as it stands. The remedy should, I think, be sought on the direction indicated by the hon'ble gentleman in his speech, namely, that where an oral contract has been given effect to by the continuous payment of the enhanced rent for a certain number of years, this performance should have the effect of validating the contract, and I would adopt the analogy of the rule in the case of the 'prevailing rate' and fix the term of three continuous years during which the rent has been actually paid as sufficient performance to validate the contract in the place of registration.

"Turning now to the substantive objection which the hon'ble and learned member opposite has taken to the essential point of the section, that the rent shall only be enhanced by contract to the extent of two annas in the rupee above the previous rent, I need not repeat at length what I said in my opening speech. I pointed out then that the limitation was so easily nullified by a false recital, that if the rent was once accepted by the raiyat, the limitation would be no bar to an unscrupulous landlord; and I admitted that in cases where a landlord after succeeding in a test suit might get his raiyats generally to agree to pay the rent decreed in that suit, it would be injurious to all parties to prevent such an agreement being made and to force the landlord to bring each raiyat separately into Court to confess judgment. But, on the other hand, you have heard what vital importance the Government of Bengal attach to the retention of this clause, especially as a safeguard in those parts of the country where the raiyat's rent is already too high and where his position is so weak that he can be induced to agree to any terms his landlord may impose on him; and in the face of the urgent advocacy of the Government of Bengal I cannot recommend that this limitation should be dispensed with. There remain the special cases referred to by Mr. Evans where an unduly low rent is paid in

consideration of a special crop being grown. I think it is essential to except these cases from the general rule, and I am prepared to introduce a clause to this effect. If therefore the hon'ble gentlemen is willing to withdraw his amendment, I will move that section 29 of the Bill shall run as follows:—

'The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

'(*a*) the contract must be in writing and registered;

'(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

'(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows:—

'(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

'(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.'"

The Hon'ble MR. EVANS said he had heard with much pleasure the views of the hon'ble member in charge of the Bill, and he thought that there was substantially very little difference of opinion between him and the hon'ble member even as to the two two-anna limit, save that he utterly disapproved of it, while the hon'ble member merely entertained doubts on it. He would therefore withdraw his amendment on the terms proposed by the hon'ble member in charge of the Bill; but on the distinct understanding that he did not abandon his opposition to the limit on enhancement out of Court as useless and pernicious. He would not have withdrawn his amendment so far as it concerned this point had not the Mahárájá of Durbhunga been about to move a special amendment for striking out this clause.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA moved that clause (*a*) of sub-section (1) of section 29 be omitted.

The Hon'ble MR. EVANS remarked that this was the amendment he referred to and he had said all he wished to say on the subject. He should strongly support the amendment.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said I have the honour to support the amendment moved by the Hon'ble the Máhárájá of Durbhunga. Both the Rent Commission and the Government of India took the position that Government had the right of determining the rates of rent payable by tenants to their landlords. The Rent Commission observed in paragraph 44 of their report:—

'Government never intended in 1793 to abdicate the function of determining the proportion of produce payable by the raiyat, a function cast upon them by the ancient law of the country,'

and the Government of India stated in their despatch to the Secretary of State, dated the 21st of March, 1882:—

'In his well-known minute of the 3rd February, 1790, Lord Cornwallis observed that the right of the Government to fix at its own discretion the amount of the rents upon the lands of the zamíndárs had never been denied or disputed.'

"But Lord Cornwallis never said such a thing. The position taken by the Government of India was not only disputed, but had been conclusively dis-

proved by the landholders. His Honour the Lieutenant-Governor apologetically quoted yesterday extracts from contemporary State literature in support of the alleged right of Government to determine rates of rent, but there was no need of any apology for his quotations. I shall presently show that contemporary State literature left no doubt whatever on the question, but before so doing I wish that it should be borne in mind that there were two parties in connexion with the proposal for a permanent settlement of the land-revenue, one for it and one against it, and that no point could be established by referring to the vacillating opinions of the parties expressed before the settlement was made. The reference, for instance, made by His Honour to the opinions of Warren Hastings was most unfortunate. All know that his conduct towards the landholders in having deprived them of their estates and let them out in farms evoked a severe censure from the Court of Directors, that it formed one of the grounds of his impeachment before the House of Commons, and a Parliamentary Statute, 24 George III, cap. 24, was passed, among other purposes, for the object of undoing the acts of Warren Hastings in this respect, and restoring their estates to the landholders after due enquiry. A correct insight into the nature and effects of the Permanent Settlement can be got only from the Regulations themselves and from the writings of Lord Cornwallis and of Sir John Shore, who, after a most searching and careful inquiry into the rights of landholders and tenants, came to the conclusions recorded in their minutes. The settlement was not an idea suddenly conceived and forthwith put into execution. For years before it was actually made there was an elaborate enquiry into the nature of the status and rights of zamíndárs and of their raiyats, and the conclusion to which the Government came was that 'the regulation of the rents of the raiyats is properly a transaction between the zamíndár and his tenant and not of the Government'—Shore's minute dated 18th September, 1789. In another part of the same minute he said :—

'The Institutes of Akbar show that the relative proportions of the produce settled between the cultivator and the Government ; yet in Bengal I can find no instance of Government regulating these proportions.'

"The rent which the zamíndárs received from their raiyats was the parganá or established rent. It was nothing more nor less than the highest competition-rent. This is proved beyond all doubt by the minute of Lord Cornwallis, which was quoted by the Government of India in their despatch to the Secretary of State. His Lordship said :—

'Whoever cultivates the land, the zamíndár can receive no more that the established rent, which in most cases is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.'

"Again, the Preamble of Regulation II of 1793 showed that Government left 'it to the people themselves to distribute the portion payable by individuals,' and that 'Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.' The hon'ble mover of the Bill observed, on the occasion when the Bill was introduced, that the right of Government to interfere in the matter of determination of the rents payable by raiyats was clearly recognised by the Marquis of Hastings, and the hon'ble member gave to the Council extracts from His Lordship's minutes in support of his view ; but, although the Marquis of Hastings was no friend of the zamíndári settlement, the opinion he formed of that settlement after he had been in the country for a number of years varied considerably from the opinion which the hon'ble member communicated to the Council. I shall read to your Lordship an extract from the writings of the Marquis of Hastings contained in Bengal Revenue Selections, Volume III, page 340.

'The whole foundation of our Bengal Revenue Code resting on the recognition of private property in the soil, and the relinquishment by Government of any right in land occupied by individuals beyond that of assessing and collecting the public revenue, it may be assumed that the sadr málguzár, if admitted to engage as proprietor, was intended to be vested, subject to the payment of Government revenue, with the absolute property of all land in which no other individual possessed a fixed and permanent interest, and which may have been held

and managed by such málguzár, his representatives or assignees. Lands occupied by contract cultivators, accounting for their rents immediately to the sadr málguzár, were thus to be regarded as the full property of such málguzár, subject to the stipulations of the contract. It was also doubtless intended to recognize the full property of the zamíndárs in unclaimed waste lands lying within the limits of their maháls.'

"The question was again discussed in 1827 in connexion with Mr. Harrington's 'Bill for maintaining the rights of khúdkhast, chupperbund and other resident raiyats.' I think it necessary to read the opinion upon it by Mr. Ross, one of the Judges of the then Sadr Court.

'The clause, if enacted as it now stands, would probably be construed by the Courts as intending to confer an istimrári right upon every resident raiyat who had been allowed (although without title) to occupy the lands cultivated by him for twelve years, at a rent which had not varied during that period—a construction which could not fail to be productive of injustice to the zamíndárs, by encouraging their raiyats to claim rights which they had never actually possessed, and which they had never been considered to be entitled to.'

"And, as regards the rights of resident raiyats generally, Mr. Ross made the following valuable observations:—

'That all resident raiyats are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed regulation, is, I think, also questionable: such a right is not claimed, I believe, by mere raiyats, whether resident or non-resident, in the Upper Provinces; and if claimed in the Lower Provinces, it could not, I apprehend, be established by a reference to either the ancient law or the ancient custom of the country.'

"The question before the Council was fully discussed, and I hope finally settled, by a Select Committee of the House of Commons in 1832. A large number of gentlemen who occupied eminent positions in the service of the Government of India or who had retired from that service, men like John Kay, Holt Mackenzie, James Mill and a host of others, were examined, the whole field of State literature was ransacked, and the conclusion to which they came was that—

'Unless the Government should, either by public or private purchase, acquire the zamíndári tenure, it would, under the existing Regulations, be deemed a breach of faith, without the consent of the zamíndárs, to interfere directly between the zamíndárs and the raiyats for the purpose of fixing the amount of land-tax demandable from the latter under the settlement of 1792-93.'

"It is for Your Lordship and this Hon'ble Council to determine whether in the face of such authoritative opinions, the distinct disclaimer of the right to interfere contained in the Regulations, and of the conclusions arrived at by the paramount authority in the realm, a limitation to enhancement of rent of the nature contained in the Bill is at all warrantable.

"The question might be considered in another aspect. It appears from Sir John Shore's minute, dated the 8th of December, 1789, that the rates of rent which obtained at the time of the Permanent Settlement ranged from half to three-fifths of the value of the produce of the land. This statement is confirmed by the fifth report of the House of Commons, and I find from copies of settlement papers of 1783, obtained from the Collector's Office of the 24-Parganás, that the rates of rent per bighá of land are variously stated at Rs. 2-10, Rs. 2-13, Rs. 2-14, Rs. 3-3, and so forth. The highest rents which obtain at present in the 24-Parganás barely show an increase of 50 per cent. over the rents which obtained in 1783. Considering that the prices of produce have trebled and quadrupled during this interval, it is clear that the zamíndárs have used with the greatest moderation their powers as to settlement of rent, and that the rates which obtain at present are far below the rates which they are entitled to get. A limitation like the one in question would therefore deprive them of their just dues, although they have hitherto exercised their powers with laudable moderation, and the tenants are very far from being rackrented, the undisputed fact being that the rates of rent vary from one-twentieth to one-third of the value of produce in these provinces.

"The injustice of the limitation is also clear from the fact that the re-settlements annually made by the Bengal Government in their khás mahál and temporarily-settled estates show that the rates of increase are much greater than two annas in the rupee. I find that in 1883-84 the re-settlements show an increase of Rs. 24,210 over Rs. 58,799, or 4½ annas in the rupee; in 1882-83 an increase

of Rs. 31,968 over Rs. 92,021, or 5½ annas in the rupee; in 1880-81 an increase of Rs. 1,31,805 over Rs. 2,84,682, or 7 annas in the rupee; and in 1879-80 an increase of Rs. 64,504 over Rs. 1,72,804, or 6 annas in the rupee. I do not for a moment wish this Hon'ble Council to understand that the increases shown by these re-settlements were anything but fair and equitable: I have every reason to believe, on the contrary, that the enhancements of rent were very moderate.

"Looking at the economic aspect of the question, I wish hon'ble members will bear in mind that there is no pressure of population on land in these provinces. The total area of the different districts, including those of Orissa and excepting Nuddea, Jalpaiguri and Darjeeling, about which full information is not forthcoming, is 128,344 square miles, as shown by the returns submitted by the Board of Revenue; and I find from the Hon'ble Dr. Hunter's statistical accounts that the total cultivated area in these districts is 79,307 square miles, showing a difference of 49,037 square miles or somewhat more than one-fourth of the area of these provinces as still uncultivated. The effect of the limitation would, therefore, be to check the extension of cultivation, and lower, in an abstract sense, rents which are at present very low already. Low rents are neither good for the raiyats nor good for the country. Experience has everywhere shown that they act as a damper on the condition of the tenants and are a great drawback to their prosperity. Our own country has furnished instances of the fact. I shall read to this Hon'ble Council an extract from a paper connected with Dekkhan Raiyats' Relief Bill:—

"'There is undeniable evidence in the report before us that the very improvements introduced under our rule, such as fixity of tenures and lowering of assessments, have been the principal causes of the great destitution which the Commissioners have found to exist.'"

"The history of the proposed limitation is also significant. The draft Bill of the Rent Commission contained no restriction whatever to freedom of contract in this respect and to enhancements out of Court. It found no place also in the Bill drafted by the Hon'ble Mr. Reynolds, the Bill which was submitted by the Bengal Government, and the Bill which was forwarded to Her Majesty's Secretary of State for his sanction. For the first time a limitation of six annas in the rupee was inserted in the Bill which was introduced in Council in March, 1883, and it was reduced to four annas in the rupee by the Select Committee last year. An attempt was made when the question came up in its turn to reduce the limitation to two annas in the rupee, but the motion was rejected by the majority of the Select Committee, the mover finding himself in the minority of one only. At a subsequent meeting the question was all of a sudden taken up, although it was not on the notice-paper, and the limitation was fixed at two annas in the rupee.

"I shall conclude by noticing one or two observations which have fallen from hon'ble members. In expressing his intention of moving that the restriction to enhancement of rent by suit in Court should not exceed four annas in the rupee, the Hon'ble Mr. Amír Alí has virtually condemned the two-annas limit by contract as unjust and inequitable. The remark made by more than one hon'ble member to the effect that the limitation in question would not check the acts of unscrupulous zamíndárs is an additional argument why the honest should not suffer by it. His Honour the Lieutenant-Governor has observed that the case would have been different if the legislature had to deal with a class of tenants better capable of understanding their rights and entering into sentient contracts than the Bengal raiyats; but I hope after Your Lordship has gained some experience of the country, and before Your Lordship leaves our shores, you will carry with you the conviction that in intelligence and in a thorough knowledge of their civil rights and duties, not less of their social and religious duties, the raiyats of Bengal and Behar might compare favourably with their fellows in any other country."

The Hon'ble SIR STEUART BAYLEY said that he would answer very briefly. He would have to recall the attention of the Council to the question which was now before them, and which was really remote from the learned disquisition in which the hon'ble member had just been reviewing a number of various

subjects, beginning with the iniquity of Warren Hastings and ending with the religious duties of the Behar raiyats. The question before them was whether the clause limiting enhancement out of Court to two annas in the rupee should stand. In its practical aspect the question had already been debated on Mr. Evans' motion, and he had nothing more to say on this score. The Permanent Settlement had really nothing whatever to say to it, and he thought he might say that the Council had sufficiently satisfied itself before the second reading of the Bill that the authors of the Permanent Settlement were themselves convinced of the right of the State to interfere to limit the raiyat's rent; that in limiting that rent to the parganá rate they did so interfere; that they expressly reserved their right to interfere further if necessary, and whether they had done so or not no settlement could possibly so bind a subsequent Government as to take away from it the inherent right to fulfil its primary duty of giving protection to the main body of its subjects. He would only further say that he must oppose the motion.

The Hon'ble MR. REYNOLDS remarked that he had no wish to detain the Council, but could only say again that the clause was one which the Government of Bengal had decided to adopt, and to which they attached great importance, and it was one of the few safeguards left in the Bill against undue enhancements. He did not think the Council should agree to strike out the clause.

The amendment being put, the Council divided :—

Ayes.	*Noes.*
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.	The Hon'ble J. W. Quinton.
The Hon'ble G. H. P. Evans.	The Hon'ble H. St. A. Goodrich.
The Hon'ble Peári Mohan Mukerji.	The Hon'ble H. J. Reynolds.
The Hon'ble T. M. Gibbon.	The Hon'ble W. W. Hunter.
	The Hon'ble T. C. Hope.
	The Hon'ble Sir S. C. Bayley.
	The Hon'ble C. P. Ilbert.
	Lieutenant-General the Hon'ble T. F. Wilson.
	The Hon'ble J. Gibbs.
	His Excellency the Commander-in-Chief.
	His Honour the Lieutenant-Governor.

So the amendment was negatived.

The Council adjourned to Friday, the 6th March, 1885.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

SIMLA ;
The 28th April, 1885.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Friday, the 6th March, 1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Durbhunga.
The Hon'ble J. W. Quinton.

PETROLEUM BILL, 1885.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Petroleum Act, 1881. He said:—

"I must state that when the Act of 1881 was under consideration a Committee, on which were representatives of the Chamber of Commerce and the Trades Association, carefully considered the schedule which it was proposed to attach to the Act, and which had been taken from the English Act of 1871, and they reported in favour of it and Government adopted it. It must be remembered that the Act provided that petroleum must stand the test of 73° to enable the Government to admit it into the country, and the method of testing the oil is laid down with great minuteness in the schedule. In spite, however, of all this care, shortly after the Act came into force, cargoes arrived here and in Bombay which had left America after it was known that 73° was the admission standard, which when sampled and tested on arrival flashed below the authorized standard, and in consequence came within the definition of dangerous petroleum and was refused import.

"This led to a very long correspondence between the shippers, the Governments of Bengal and India and the Secretary of State; and Mr. Redwood came out from England to test the oil on behalf of the shippers; after some months, on further testing, it gave the required results and the oil was allowed to import, but not until after the shippers had been put to very great expense. Very many and intricate experiments were carried out by Messrs. Warden and Pedler here, Dr. Lyon in Bombay, Sir F. Abel and Mr. Redwood at home, with the hopes of finding out a method which would ensure correct testing; and we

have now received a new schedule prepared by Sir F. Abel, of the War Department, who is the highest authority on the point, and it is to insert this in the place of the former schedule which is one of the objects of the present Bill.

"The Government is greatly indebted to the gentlemen to whom I have just alluded for the great care and attention they have given to the subject. Dr. Lyon took privilege leave and went home, and worked with Sir F. Abel and Mr. Redwood; and the experiments carried out there, here and in Bombay have been almost beyond number. The matter was of the greatest importance, as the trade is one of great magnitude and the nature of the oil requires that only such as is ordinarily safe should be admitted into the country.

"In asking today for leave to introduce the measure I do so in order that the Bill may be before the public for sufficient time to enable the Trade to consider its provisions, especially the schedule, carefully, while there are some further details regarding which, though not of a nature to affect the commercial world, will require further consideration from Sir F. Abel and the experts; it is also advisable to have standard instruments at Calcutta, Bombay, and perhaps Rangoon, tested and approved, and registered before the Bill becomes law. Under these circumstances the measure will be introduced and allowed to lay over until the Council meets again in Calcutta next cold season.

"From the Statement of Objects and Reasons it will be found that the principal points for amendment are—

"(1) The alteration of the standard. 'Dangerous petroleum' is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3° and no one sample has a flashing point below 70°.

"(2) The nature of the vessels to hold dangerous petroleum. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in 'glass', among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels, and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of 'dangerous petroleum', bursting, even if 'securely stopped', when exposed to powerful sunlight for a brief period, the prudence of including *glass* vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word 'glass'.

"(3) The landing of petroleum at special places, and fees. The Government of India is of opinion that the restrictions at present placed on the importation of non-dangerous petroleum may be somewhat relaxed, and, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored.

"(4) The new schedule and instruments to be verified. It is proposed to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted. It seems desirable, for the convenience of the public, to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall be constructed. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus.

"The new schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay; and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. It is believed that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained."

The Motion was put and agreed to.

BENGAL TENANCY BILL.

The debate on this Bill was resumed this day.

The Hon'ble MR. AMÍR ALÍ said:—"Whatever I had to say on the subject of fixing a gross produce limit upon enhancements of rents I have already stated in the general observations I offered the other day on the Bill, and I do not therefore propose to take up the time of the Council by referring to those points again. But in view of the opinion entertained by the majority of the hon'ble members, as far as I have been able to gather them, I think it would be useless to bring forward the next amendment which stands against my name. I therefore desire leave to withdraw it. The amendment which I intended to have moved is to insert the following words in line 4 of clause (*a*) of sub-section (1) of section 24:—

'or so as to entitle the landlord to recover in the aggregate more than one fifth of the average value of the gross produce of the land in staple food-crops calculated at the price at which raiyats sell at harvest-time.'"

Leave was granted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that clause (*b*) of sub-section (1) of section 29 be omitted.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI said:—"I have already submitted to the Council with reference to section 9 the arguments bearing on this question, and do not wish to address the Council on the present occasion. I need hardly say that I support the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"The reason why we cannot accept this proposal is obvious, that it will leave the raiyat liable to annual or quarterly enhancements by suit. It could scarcely be expected that the amendment could be accepted."

The amendment was put and negatived.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI moved that in clause (*b*) of sub-section (1) of section 29, for the word "fifteen" the word "ten" be substituted. He said:—"I have already submitted to this Council the arguments in support of my proposition that an enhancement of rent should obtain currency for 10 years and not 15. The rapid strides which the country is making in material progress make it desirable that the shorter minimum period should be adopted. If there is an actual rise in prices within 10 years, there is no reason why the landlord should not get enhanced rent on account of such rise of prices, and it would be a sufficient check against any oppressive suits if the landlord is restricted from bringing a suit after the rent has been once enhanced before the expiration of 10 years from the first enhancement."

The Hon'ble MR. QUINTON said:—"I oppose this amendment because it applies only to enhancement by contract and not to enhancement by suit. It

appears to me that whatever term is fixed in the one case ought to be fixed in the other. As many enhancements will be by suit, I think it will be hard on the raiyat to fix a less period in such cases."

The Hon'ble MR. GIBBON said:—"As I am of opinion that all the terms and conditions of a voluntary contract should be left to the parties concerned, and that they should not be driven to Court, I am strongly of opinion that no term should be inserted in the Bill. Being of that opinion, I would prefer that all contracts, if there is to be a limit, should be for a shorter period even than 10 years. But as no such proposition is before the Council, I shall vote for the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"The question between 10 and 15 years in regard to contracts is of course a question of degree. Having once settled that the rents of enhanced contracts are to run for a fixed period, it is a question of the balance of advantage. I do hope my hon'ble friend will consent to the necessity of fixing the same term for enhancements by contracts as for enhancement by suit."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"My amendment upon section 9 was lost simply on the argument that the same rule should obtain in the case of a tenure-holder as in the case of a raiyat; and as the Bill contains a provision to the effect that 15 years should be the minimum period in regard to the enhancement of rents of raiyats, the same period should be maintained as regards tenure-holders. Hon'ble members do not meet any of the other arguments advanced by me. With reference to the present amendment, the only argument urged by the hon'ble member in charge of the Bill is that the period must be the same as the period fixed for tenure-holders. None of the other arguments adduced by me have been met by any hon'ble member either on the present or the previous occasion. I submit this is simply arguing in a circle. Of course, the amendment rests on the vote of the Council, but I think it is a very striking fact that the previous amendment was lost because there is this provision in reference to raiyats, and this motion is objected to because there is a previous provision with reference to tenure-holders."

The Hon'ble SIR STEUART BAYLEY asked permission to explain. He said:—"The hon'ble member has quite misunderstood what I intended to say. I said that the section as to enhancement by contract ought to be the same as that for enhancement by suit. The real vote would then be taken on the section relating to enhancements by suit. I did not in the smallest degree intimate that the provisions of this section would depend on the provision relating to enhancements of the rents of tenure-holders."

The amendment was put and negatived.

His Excellency THE PRESIDENT said:—"We have now reached that stage in the Bill when it will be convenient for the hon'ble member in charge to introduce the modification we have agreed to as to the result of the discussion which took place yesterday."

The Hon'ble SIR STEUART BAYLEY said:—"I will now move the amendment which was agreed on the motion of the Hon'ble Mr. Evans in reference to section 29. I accordingly move that for section 29 the following be substituted:—

'29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

'(*a*) the contract must be in writing and registered;

'(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

'(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

'Provided as follows:—

'(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

'(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.'"

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"I should wish, if it can be done, to consider this new section at the next meeting of the Council, or after the Council adjourns in the course of the day. I may perhaps have to propose a short amendmant on one of the clauses of the proposed section."

The consideration of the proposed new section was postponed till after the adjournment for luncheon.

The Hon'ble MR. REYNOLDS moved that in section 30, for clause (*a*) the following clause be substituted:—

"(*a*) that the rate of rent paid by the raiyat is substantially below the prevailing rate, that is to say, substantially below the rate generally paid for not less than three years by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no reason for his holding at so low a rate".

He said:—"It is not the object of the amendment to re-open the question of the abolition of the prevailing rate as a ground of enhancement. That question has been decided by the Select Committee, who have justly remarked in their report that this is the only means by which a landlord can remedy the effects of fraud or favoritism on the part of his agent or predecessor. I submitted to the Committee an amended form of the section, which would, in my opinion, have provided a sufficient remedy, while guarding against that misuse of this ground of enhancement, of which such strong and concurrent testimony has reached us from various parts of the country. My proposal, however, was not favourably received, and I do not now desire to revive the discussion on the question of abolishing this ground of enhancement altogether. If I refer at all to the general question, it is only because I imagine that the Council will expect me to offer some explanation in reference to what fell from the Hon'ble Mr. Evans in connection with the Malinagor enhancement cases. I understood the hon'ble member to contend that the Bengal Government could not consistently advocate the abolition of this ground of enhancement while at the same time it was pressing the Courts to enhance the rents of its own tenants on this very ground. Now, I think it right to state that these cases were instituted in 1876, at a time when attention had not been called, as it has been called of late years, to this matter of the enhancement of rents. I don't think the head of the Government can fairly be taxed with inconsistency for advocating in 1885 the repeal of a law which one of his subordinates put in force in 1876. This ground of enhancement was the law then; it is the law now; and while it continues to be the law the Government is as much entitled to have recourse to it as any private zamíndár. Moreover, when the facts are looked at, I think this case affords a strong support to the position which the Government of Bengal has taken up regarding this question. What the Government has said is, that it is wrong in principle to enhance one raiyat's rent on the ground, not that it is too low in itself, but that other raiyats have agreed to pay more; that such enhancements are often productive of hardship; that no real prevailing rate can be found; and that, therefore, in 19 cases out of 20, landlords are tempted to fabricate a rate for the purposes of the suit. Now, here is a case in which a number of raiyats were paying not merely lower rents than their neighbours but rents altogether inadequate; the strict application of the law would have warranted an enhancement of (in some cases) 200 per cent., but

just because the Government applied the law fairly, and did not attempt to manufacture a rate, the litigation has gone on for nine years, and matters are very much where they were when it began. I don't think there could be a stronger instance of the hopelessness of fairly applying this rule of enhancement. If the Government had established its claim it would have been a great hardship to the raiyats to have had their rents enhanced by so large an amount, but the Government has so far failed to make out its case because it has failed to show what the prevailing rate is. A plaintiff will almost always fail to show this unless he takes measures beforehand to establish, or, in other words, to manufacture, a rate, and accordingly that is the general means of proceeding in these cases. To use the forcible language of an acute and experienced Judge—'The prevailing rate is as a rule manufactured by the aid of raiyats bought over to submit to enhancement, and the new rate thus introduced is made to spread over the country by the agency of the Courts.' The landlord who attempts to work this ground of enhancement fairly will find himself involved in litigation as tedious and as unprofitable as these Maliñagor suits have proved to the Government of Bengal.

"This, however, is somewhat foreign to the subject of my amendment, which merely aims at introducing a slight alteration in the wording of the Bill. The Select Committee have changed the language of the present law, and in some respects they have changed it very much for the better. But they have introduced a novel and most dangerous principle—the principle of ascertaining the prevailing rate by taking an average of existing rates. This, I think, is the interpretation which any Court would naturally put upon the words which direct the Court to have regard to the rates generally paid during a period of not less than three years. This is entirely opposed to the present law, as will be seen by a reference to the reported case of *Sumeera Khatoon*, I. W. R., p. 58, 31st August, 1864. In that case the Hon'ble Judges remanded the suit for a fresh trial and desired the lower Court to 'bear in mind that its adoption of the average rate from the different rates given by the several witnesses was an incorrect and unsafe mode of fixing the proper rate, and that the onus of proving what the proper rates are was on the plaintiff and not on the defendant.' If section 81 (*a*) of the Bill means anything, it means that the Court is to do what the High Court said was an incorrect and unsafe method to adopt.

"This doctrine of an average rate is not only illegal, but it is fraught with most mischievous consequences. I need hardly remind the Council that suits on the ground of the prevailing rate are entirely one-sided; they are always cases of levelling up, never of levelling down. The landlord may sue to enhance on the ground that a tenant's rent is below the prevailing rate, but the tenant cannot claim a reduction on the ground that he is paying more than the prevailing rate. If the principle of an average rate is once introduced, the inevitable result must be that all rents will be levelled up to the maximum. Suppose that there are three rates, at one rupee, two rupees and three rupees per bighá. Under the present law the Court would perhaps decide that no rate was sufficiently established and general to be entitled to be called the prevailing rate. But under the wording of the Bill the Court would look at the rates generally paid; and it would almost certainly come to the conclusion that two rupees was the prevailing rate. This would be all very well if the rents of all the raiyats were thenceforth to be fixed at this rate. But the only result of the decision would be to knock out the one rupee rates. The two rupees and three rupees rates would remain. In the next suit, the Court would probably decide that the prevailing rate was two rupees eight annas, and thus each successive case would be a ground for a higher and a higher claim in the next. It may be said that, as a raiyat who has once been enhanced will be protected for fifteen years, the process will at any rate be a slow one. But this really affords no security. The landlord will institute one or two cases to get rid of the lowest rates. He cannot again enhance those particular raiyats, but he can enhance all those whom he has not sued. He will sue different raiyats in successive years, and within the statutory period of fifteen years he will be able to bring all the rents in the village up to the highest level paid by any one.

"My amendment proposes to meet this by declaring that the Court shall look not to the rates but to the rate generally paid. This is entirely in

accordance not only with the law as laid down by the High Court in the case I have already quoted but with the wording of the old Regulations. Section 6 of Regulation V of 1812 declares that 'pattás shall be granted, and collections made, according to the rate payable for land of a similar description in the places adjacent.' The onus would lie on the plaintiff first to show the existence of a prevailing rate in the village, and secondly, to prove that the defendant was paying at a lower rate than this. I do not say that this would remove all the objections to the retention of this ground of enhancement in the law, but it would give the landlords all that the old law was intended to give them, and it would prevent that flagrant abuse of the law which seems likely to result from the present wording of the Bill."

The Hon'ble MR. QUINTON said that he would reply very briefly as to the reason for the vote he was about to give. He had been from the first opposed to the prevailing rate being a ground of enhancement, and if he thought the amendment of his hon'ble friend was merely confined to the removal of an inconvenience which would attend the working of the provisions for enhancing rent he would give him his hearty support. But the question was very fully considered by the Select Committee, and from what his hon'ble friend had said in his argument about the village rate, he (MR. QUINTON) had come to the conclusion that the amendment in its present form would almost entirely change the ground of enhancement as set forth in the Bill. He was opposed to the prevailing rate as a ground for enhancement, but he was still more opposed to putting in the Bill any provision which would in reality render it more objectionable as a ground of enhancement. On these grounds he must vote against the amendment. He would not give any reasons for his vote, because he thought it was not desirable that the speeches of hon'ble members should cover the same ground as that which had already been taken by the hon'ble member in charge of the Bill.

The Hon'ble MR. EVANS said:—"With regard to the first point I think the hon'ble member has misunderstood the position as to the particular case I referred to and the effect of the observations I made on the last occasion. The suits brought against the raiyats in 1876 were for enhancement on all the grounds of enhancement, and they were finally thrown out in 1878 on the ground that the notices served by the Government were ambiguous and did not show properly the grounds on which enhancement was sought to be made. Then Government instituted fresh suits in 1881, I think, and what was remarkable was that the Government then abandoned the grounds of enhancement on which they had sued in the first instance, and rested their case entirely and solely on the ground of the prevailing rate; and the observations I made were intended to show that if it had not been possible to work the prevailing rate without creating fictitious rates of rent, it was strange that the Government officers should have been of opinion that the prevailing rate should be selected as the best of all the grounds which were taken before; and I also remarked that inasmuch as the cases were now being prosecuted in appeal by the present Government, I could not believe it was the opinion of the law officers of Government that none of these suits would succeed without the manufacture of fictitious rates. Therefore I thought that the persons who were acting on behalf of the Government in these cases must entertain a different view in regard to that matter. And with regard to these cases having been an inheritance from the former Government, that could be no defence, because the officers of Government were now contending in appeal before the High Court that they had made out their case, and were entitled to have these heavy enhancements decreed on the sole ground of the prevailing rate. I merely explain this to show that my obsevations have been misunderstood. Then we come to the statement of one of the Judges, who stated that it was customary to manufacture fictitious rates. That means that some people have resorted to the practice of taking kabúliyats containing nominal rates of rent which were not intended to be enforced, and that they suborned raiyats to make documents by way of proof of a rate which was non-existent. This matter of manufacturing rates, of giving illusory evidence of this kind, was what led the Council

to make it a direction that the Court should have regard to the rates paid for the last three years. As to manufacture of false evidence, there is no class of cases in India in which false evidence is not constantly manufactured. The moment any law is passed, there are many persons who at once proceed to see how evidence can be manufactured to meet the requirements of the law. If this manufacture of false evidence were a good ground for repealing this part of the present rent law, it would be an equally good reason for repealing one-half of the laws we have made. With regard to the other matter of average rates, as long as we preserve the words of the present law 'the prevailing rate,' and not the average rate, the rulings of the High Court which prohibit the striking of an average, except to a very small extent in very special cases, would equally apply to the present section as settled by the Select Committee; and that there is nothing unfair in giving a direction that the Court should look to the prevailing rates will be apparent from the case in 5 W. R., page 70, in which the Court expressly said that the Judge must look to the rates prevailing at places adjacent. I do not think we have in reality in any way changed the law or the rulings on the subject of average. Say, there are two rates, one of Rs. 5 and one of Rs. 2; merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think the class of judgments I have more than once referred to, in which the Judge says 'This man is found to be holding at Re. 1; the claim is to have his rent enhanced up to Rs. 2 on the ground of the prevailing rate, and there is a great deal of contradictory evidence as to what the prevailing rate is; I doubt the evidence which makes it out to be Rs. 2, but I find that except in isolated cases land of this description is never held under Re. 1-8; therefore, I shall be safe in finding that the 'prevailing rate' is not less than Re. 1-8',—that is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so. Because it seems, according to Colebrook, that he, having found in 1811 that the parganá rates were in many cases undiscoverable, thought it would be wise to provide some rules with regard to such cases, and the rule having been made in the Regulations of 1812, gave rise to the provisions as to 'prevailing rate' in the Act of 1859. Under the expression 'the prevailing rate for similar lands held by similar classes of raiyats in places adjacent' the Courts have been able to give a certain amount of relief; and this ground of enhancement has, I think, on the whole been found the most workable of the grounds provided in Act X of 1859.

"Then with regard to the actual amendment which has been brought forward by my hon'ble friend, I will point out that the great objection is this, that it incorporates into the definition directions which the Select Committee propose to give to the Judges. Every lawyer knows that if into a definition of the ground on which enhancement is to take place you incorporate a number of things which the Court may have regard to, you make those things so positively a part of the definition, that in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground. I fear it will be exceedingly difficult for a Court to conduct an investigation in this way without an enormous amount of expense and laborious investigation, and that there will hardly be a case which will not be capable of being upset by a special appeal to the High Court. It is not because I wish to change or widen the law that I think the draft, as it has been settled by the Select Committee, should remain. I should be sorry again to do what has been inadvertently done in Act X of 1859, that is, to offer to landholders grounds of enhancement which are unworkable; and if that is done again after the strongly expressed determination of the Government and of the Select Committee to make the grounds really workable, I think we shall be incurring a very grave responsibility, and that we shall find it very difficult to justify ourselves. We have in fact cut down the area from which we are to draw the comparison; we have cut it down to the village, and complaints are heard that we have cut it down too much, because as the law stands you may enhance rent of a whole village by showing that the neighbouring zamíndár has succeeded in getting his villages to pay higher rents. Adjacent land, it has been held, need not be conterminous. Although the provision as it stands in the Bill somewhat restricts the power which the zamíndár at pre-

sent possesses, we thought it well, on the whole, to cut it down, because it has been found that raiyats have now great difficulty in meeting suits for enhancement of rent on the ground of the prevailing rate, because the area for comparison is wide and vague, while zamíndárs find it difficult to know how much proof to give as the area is undetermined. But having cut down the area of comparison to the village itself, one does not like to insert words likely to increase the risk of its being unworkable. And that will be the effect of the proposed amendment. I am therefore obliged to oppose it."

The Hon'ble MR. HUNTER said:—"My Lord, I should like to say a few words on this subject, as I start from an opposite point of view from that which has been taken by the hon'ble mover of the amendment. I think the prevailing rate is in itself a good ground of enhancement. It is a ground which has always existed; and it has been continuously enforced in the management of estates since we entered the country. It is a ground which has been recognised by our early Regulations; and it was formally embodied in the law of 1859. It has been frequently urged upon the Select Committee to expunge that ground or to modify it in some way, so as to render it ineffectual. The Select Committee have taken precisely the opposite course. They have endeavoured to give reality to the old law in this as in other matters, and to render the prevailing rate an effective ground of enhancement where it can be equitably urged. I believe that the amendment now brought forward would have the effect of nullifying this ground of enhancement by rendering it very difficult to enforce it in the Courts. It would lead to the very abuses and fabrication of evidence which the hon'ble member who moved the amendment has so frequently and so eloquently deplored. I therefore think that if the prevailing rate is to remain at all, the Select Committee have done wisely in giving reality to it."

His Honour THE LIEUTENANT-GOVERNOR said:—"I concur with my hon'ble friend the mover of the amendment. I think the amendment gives better security against fabrication and provides better safeguards against abuses than those which will prevail under the section as it stands. In putting forward this amendment we recognise the retention of the prevailing rate as one of the main grounds of enhancement, though I believe that whatever wording may be adopted, in the application of it you will find that it is practically unworkable, from the fact that it is totally impossible to prove in any part of the country the existence of a prevailing rate. It is defended on the ground of its antiquity; but if that is its main ground of defence, then there are a great many other things which we might have to fall back upon. One of these was that in the early days zamíndárs who did not pay the land-tax were immediately punished in person and kept in prison. The growth of information and experience has shown the way in which the prevailing rate is worked. The difficulty of establishing the existence of a prevailing rate has led to irregular and improper means to fabricate it. The resort to such measures is demoralizing to those who use it and unjust to the unfortunate raiyats. Wherever we have had local enquiries and anything like detailed investigation, the fact has come out that there is no such thing as a prevailing rate, and that the rates of rent in every village were innumerable. This was the result of the personal enquiries held by Mr. Finucane, Mr. Tobin and Bábú Parbati Churn Rai upon this particular point in different districts; and I believe that if detailed enquiries were made elsewhere, you would find exactly the same results. I am glad to hear from my hon'ble friend Mr. Evans that he thinks the form of safeguard adopted by the Select Committee in the Bill will secure that the Courts do not take the average of numerous rates in the decision of suits under the section. It is only to make this point stand out clearer that the wording of the amendment which I would support has been suggested. The Courts have always held that the provision of the law as it stands should not be worked in the way of taking the average of many rates. The section by the amendment only gives emphatic support to this rule. With regard to the personal matter which has been brought against me with reference to the rent suits at Malinagor, I wish to say that, so far as regards the time when those suits were instituted

in 1876 or 1878, the argument *ad hominem* which the hon'ble and learned member (Mr. Evans) directs against me, can have no application to me, because in those years I was employed in another and distant field of service, and had nothing to do with Bengal; but it is obvious that even if I had then been Lieutenant-Governor of these provinces, I could not possibly have interfered in the matter. The prevaling rate is a ground of enhancement in the existing law, and it was perfectly open to our Collectors and law officers to adopt it for enhancement in particular cases. But beyond that I would justify myself on the ground that a Lieutenant-Governor is not in a position to know what cases are going on in litigation between Government and others, and there may be hundreds of cases going on in different districts at the present moment in which the prevailing rate is being urged as a ground of enhancement. As my hon'ble friend, the mover of the amendment, has observed in the present state of the law, the Government has as much right as anybody else to appeal to the grounds which the law allows, though it may not be wise in doing so. It may be observed that even in the Malinagor suits it has not yet been proved that there is such a thing as a prevailing rate. The decision of the Judge was a very summary decision, and I understand that an appeal to the High Court has led to a call for the papers to ascertain whether there is such proof of a prevailing rate as to justify the finding of the District Judge. Therefore this particular case gives no support to the theory of a prevailing rate. As the principle of a prevailing rate however is to be retained in the Bill, the aim of the amendment is by providing an additional safeguard against its wrong use to prevent the recourse to an average rate, which the law never intended."

The Hon'ble SIR STEUART BAYLEY said :—"I think I should be grateful to the Government of Bengal that they have not opposed the ground of the prevailing rate altogether; they have however discredited it, by saying that it does not exist, and that there is no justification for it. I will not follow my hon'ble friend Mr. Reynolds in the exhaustive disquisition which he has given as to the reasons there were for supposing that the prevailing rate can never be found, but I will confine myself to the particular points which are before me. But I must first say one word with regard to the decision to which the Select Committee came not to abolish the ground of the prevailing rate generally. The main reason, as I explained before, was that in one shape or another it has been allowed as a ground of enhancement since the time of the Permanent Settlement; the parganá rate of which had been transmuted into the prevailing rate, and had in that shape been in the Statute-book since 1812. In that case I may fairly say it will be hard to remove the prevailing rate altogether, even if there were no other reasons for retaining it, and those who oppose it will have to show very strong reasons for doing so. But there is really a very sufficient reason why it should be retained, namely, that there are no other means by which the zamíndár can recover a just rate of rent from those raiyats who by reason of relationship to the *amlé*, or of caste, or by bribery, have been allowed to enter and hold at very insufficient rates. My own experience as to the management of wards' estates has convinced me that where gumáshtas have not been very closely looked after, they are in the habit of letting in their relations and friends at very low rates of rent, and the zamíndár has no means of remedying the results of the fraud or friendship either of a predecessor of his own or of his predecessor's agent or gumáshta; and it was for that reason that I voted with the majority of the Select Committee for the retention of the prevailing rate. I could not accept the suggestion to which my hon'ble friend Mr. Reynolds refers as having been made by him to the Committee because it threw on the zamíndár the impossible task of proving that fraud or favoritism attended the original letting to the raiyat, and the remedy would have been quite useless.

"I now come to the alteration proposed in the amendment, which at first sight seems a very little one. At first sight it merely uses the singular where we use the plural, but it also inserts as part of the definition what the Bill as it stands puts in as a guiding direction to the Court; and that makes all the difference in the world. In the one case the Court is bound by a hard-and-fast

rule which, if the case fails to tally exactly with the definition of the prevailing rate, causes it to fall to the ground; in the other the directions are for the guidance of the Courts as to the steps they should take to ascertain the existence and reality of the ground taken for enhancement. That is my real objection to the amendment. The proposed amendment will not have the effect which anybody on first reading it will suppose it is intended to have. It is apparently intended to allow enhancement on the ground of the raiyat's rent being below what is the prevailing rate as it is now understood by the Courts. My hon'ble friend Mr. Evans has told us that the Courts are very rightly not allowed to make an average. But the amendment goes further than this. It comes to this, that if there is more than one rate, if everybody is not holding at the same rate, then the ground of a prevailing rate could in no case be at all maintained. If a zamíndár wants to enhance the rent of a raiyat who holds at Re. 1-8 per bíghá, and shows that out of 24 other raiyats 14 pay at Rs. 4 and 10 at Rs. 3-8, the Court must, as I understand the amendment, reject the suit, because, as in such a case there is no one single and universally prevailing rate, no enhancement can be made. If that is the meaning of the amendment, it will not do what it purports to do; it proposes to give a ground of enhancement, and then takes it away; it is practically aimed at the abolition by a side wind of that ground of enhancement as now understood and worked by the Courts. For these reasons I prefer the section as it stands, and which, we are informed, is in accordance with the present law and the interpretation put upon it by the Courts, and we are told that, if the section remains as it is, the Courts will not work it upon the principle of an average.

"I ought also to mention to the Council that I received a paper this morning too late for circulation; it is a communication protesting against our limitation of the vicinity to 'the village'; at present it is the rate prevailing in places adjacent, and now we have, as my hon'ble friend Mr. Evans has explained, restricted it to the word 'village'. The paper is from Messrs. Thomson and Mylne, landholders of Shahabad, gentlemen who, as everybody who knows the facts will acknowledge, through a long career and by their excellent example as agriculturists in Behar have earned the highest possible reputation both as progressive agriculturists and also as good landlords. These gentlemen object to our restricting the right of enhancement on the ground of the prevailing rate to the village, because they say it prevents a landholder who has allowed the rate to remain low in his own village from taking advantage of the more severe and stringent action of his neighbour in the neighbouring village. The answer to that has already been given by my hon'ble friend Mr. Evans, namely, that the point was carefully considered by the Committee. The grounds which led to the change which has been made are two—first, that a very wide interpretation was given by the Courts in recent cases to the words 'places adjacent', and in one case it has been interpreted to cover not the adjacent villages nor even the whole parganá, but the neighbouring parganás, which might be 30 or 40 miles off. It is perfectly clear that when you compare a raiyat's rent with rents paid in places at some distance you do him an injustice, because as long as you confine it to his own village he can prove what the rates are. But if you go outside his own village, the raiyat is quite unable to show what the rate there really is, and is at the mercy of the evidence brought by the other side. And from that point of view—and it was to a great extent accepted by the representatives of the zamíndárs—we came to the conclusion that it is on the whole fair to restrict the comparison of rates to the particular village. I make these observations, although no one has objected to the alteration which has been made by the Committee, because it is the only opportunity which I have had to refer to the objections which have been made by my highly-respected friends Messrs. Mylne and Thompson."

The Hon'ble MR. REYNOLDS said in reply:—"I purposely avoided referring to the general question. I did not attempt to argue in favour of the abolition of this ground of enhancement altogether. The charge brought against the amendment is that it would practically be depriving the landlord of this means of enhancement. If the general question is raised, I quite admit with the hon'ble member that this is the only means by which a landholder can

remedy acts of fraud or favouritism of his agent or of his predecessor; but if that is the ground on which the hon'ble member defends his position, why does not he confine the operation of the section to cases of that kind? Then, with regard to the question as to the operation of the amendment in the case put by the hon'ble member, namely, that if one raiyat paid at Re. 1-8 per bighá, and the rest some at Rs. 4 and some at Rs. 3-8, the section as proposed to be amended would prevent any enhancement at all, of course, a possible example can be put in reference to any proposal; but the object of the amendment is honestly to say that where there is no rate substantially established to be the prevailing rate, enhancement on the ground of the prevailing rate should not be allowed; and that I think is according to the existing law. If there is no prevailing rate a suit for enhancement on that ground ought to fail. But I would ask the hon'ble member to consider the hypothetical case I put, where 10 raiyats pay at Rs. 2, 10 at Rs. 3 and 10 at Rs. 4. I don't think that in such a case there should be any enhancement on the ground of the prevailing rate, because such a rate would not have been established. But the section as it stands would tend to the enhancement of all rents up to the maximum of Rs. 4, and that would not be in accordance with the principles of the present law."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that for clause (*b*) of section 30 the following be substituted:—

"(*b*) that the value of the produce of the land has been increased otherwise than by the agency or at the expense of the raiyat."

The Hon'ble BÁBÚ PRÁEI MOHAN MUKERJI moved that in clause (*b*) of section 30, for the words "staple food-crops" the words "the crop grown on the land" be substituted. He said:—"The use of the words 'staple food-crops' would give rise to this anomaly, that when the crop grown on the land had risen in value, the landlord would get no enhancement whatever if the price of the staple crops had not risen simultaneously; while, on the other hand, when the price of the staple crops had risen, and the price of the crop grown on the land had not risen or probably had declined, the raiyat would still have to pay enhanced rent, and at the same time have to spend more money in buying his food-grain. So that the provision would operate hardly both on the landlord and the raiyat; and with a view to prevent this anomaly I move this amendment, which I think is in conformity to the law as it exists at present."

The Hon'ble MR. GIBBON said:—"I certainly think my hon'ble friend has misunderstood the provisions of this section. The use of the term 'staple food-crops' is rather as a standard of value than as a means of enhancement; it is to be used for the purposes of adjustment. I think he has failed to see that the standard will affect the reduction of rents as well as their enhancement in the future. Any crop the price of which is dependent on its export value cannot be used as a standard of adjustment. If the amendment proposed be carried, it will infuse an amount of uncertainty into our system as to become intolerable; it will become impossible to follow the fluctuations of the markets. Any commodity that is to be taken as a general standard of value for the adjustment of rents must be a commodity that is in general use among the people amongst whom it is grown; only such commodities can be regular in their prices. Staple food-crops vary little in their prices from year to year, whereas the value of indigo, tea, sugar and other crops dependent on their export value for their prices constantly fluctuate, and for some years past they have least a downward tendency; the acceptance of such commodities as a standard might have the effect of reducing rents instead of enhancing them."

The Hon'ble SIR STEUART BAYLEY said:—"I explained in my opening speech what the intention of the Committee was. We took the staple food-crops as an index to prices generally. We deliberately rejected the idea of enhancing or reducing rates of rent according to the crop grown on the ground.

If the hon'ble member will look at the result of the words he proposes, he will find when he comes to enhance rents he will have to ask the Court to compare the prices of crops grown today with the prices of crops grown 10 years ago. But he will first have to prove what the crop grown 10 years ago was. This he can never do. It is not the fact that the same crop is grown for 10 consecutive years. It is especially in the more highly priced crops that variations occur more frequently. But that is not my main objection. My real objection is one of principle, that the raiyat's rent ought not to be raised because he is a shrewd man and grows the crop which will pay him best; and similarly the landlord's rent should not be diminished because the raiyat is a foolish man and grows the crop of the least value. For working purposes we assume all rents to be at a fair and equitable rate. It will require no great acumen to see that if the rates are to be altered according to the crop it will be injurious both to the landlord and to the raiyat; and if the raiyat is to be taxed for growing more expensive and remunerative crops it will in the aggregate work more harm to the zamíndár than even to the raiyat."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amír Alí, moved that for clause (*b*) of section 30 the following be substituted:—

"that the net value of the produce has been increased otherwise than by the agency or at the expense of the landlord."

He said:—"My Lord, without expressing any opinion of my own on the motion, I will state briefly the reasons which have led the hon'ble member to propose this amendment. His first argument is the general one based on the poverty of the raiyats in Bengal. My hon'ble friend considers that the raiyats, especially in Behar, are so poor as to render it exceedingly inexpedient to give to the landlords the trenchant ground of enhancement embodied in this section (30). The second argument of my hon'ble friend may be briefly stated as follows. Not only does my hon'ble friend consider that the raiyats are too poor to be subjected to so sharp a weapon of enhancement, but he also considers the advantages which the raiyats obtain from an increase in the prices are to a large extent illusory. He believes that the expense of cultivation increases *pari passu*, that very little gain really accrues to the raiyats from a rise in prices, and that what little gain does ultimately accrue to them, is needed by the raiyats to improve their position. My hon'ble friend fears that, if a rise in prices is made a ground of enhancement, not only will the cultivator obtain no advantage but he will be in a worse position than before. The effect of the amendment will be to render it more difficult for a zamíndár to obtain an enhancement on the ground of a rise in prices, I have laid before my hon'ble colleagues the arguments of my hon'ble friend, and I now leave the matter in the hands of the Council."

The Hon'ble SIR STEUART BAYLEY said:—"I must object to the amendment. The long series of litigation since 1859 has proved that it is impossible to say what the nett value of produce is, and no Court has ever been able to find out the cost of cultivation; therefore this ground of enhancement will be absolutely illusory, and the Committee accordingly rejected it."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that for clause (*c*) of section 30 the following be substituted:—

"that the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (*c*) of section 30 the following be substituted:—

"that the productive powers of the land held by the raiyat have increased otherwise than by the agency or at the expense of the raiyat."

He said:—"This is the present law on the subject. It gives the zamíndár the right to enhance rents for any increase in the productive powers

of the land, however caused, unless the cause of increase is the raiyat's own expense or agency. I do not wish to press at this moment the question of the zamíndár's proprietary right in the land. But it will be found that, even if the raiyat's rent is enhanced, it leaves to the raiyat also a share of the increase which is caused not by his own agency or expense but either by natural or artificial causes. The Bill limits the right of enhancement simply to the ground that the increase is caused by fluvial action, but there may be several other causes with which the raiyat has nothing to do, which improve the productive powers of the land, and for which improvement the zamíndár has an equitable cause of enhancement. Suppose that a railway is constructed, or a public embankment is thrown up which prevents a part of the land from being trespassed upon by cattle or wild animals, or that such work prevents the land being inundated by the overflow of the river, and that this increases its productive powers; again, suppose it be shown that by the better provision made by the Government for the conservation of forests there is greater regularity in the rainfall, and there is therefore an improvement in the productive powers of the land; I submit that in these cases the landlord is equally entitled to a share in the profits. The zamíndár's rent cannot be increased to the full value of the profit; the raiyat will get his share in it. Supposing him even to be a co-proprietor in the land, still the zamíndár, as well as the raiyat, should get their respective shares by reason of such improvement in the productive powers of the land. Instead, therefere, of limiting the ground in the way it is done in the Bill simply to fluvial action, the words of the present law in that respect should be retained."

His Excellency THE PRESIDENT said:—"I think I shall best consult the convenience of the Council by putting this motion to the vote. It is obvious that not only great loss of time but great inconvenience must result from the hon'ble member again moving an amendment which has already been dealt with by the Council. It is quite true there are four words in this amendment which are not to be found in the amendment which has just been negatived, but they do not virtually render the amendment of the Hon'ble Peári Mohan Mukerji in any sense different from that which was moved by the Hon'ble the Maháráját of Durbhunga."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that in section 30, clause (*d*) and the *explanation* be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that to clause (*d*) of section 30 the words "or other specific cause, sudden or gradual," be added.

The Hon'ble MR. REYNOLDS by leave withdrew the amendment that clause (*a*) of section 31 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*a*) of section 31 the words "during a period of not less than three years" be omitted. He said:—"The use of these words will lead to this, that if the majority of the raiyats of a village have submitted to enhancement of rent on account of a rise in the value of produce, and a dozen or a score of raiyats obstinately refuse to pay enhanced rent, the landlord will have to wait for three years before he can sue these recusant raiyats for enhancement of rents. I submit that in a suit instituted under the clause in question it will be enough for the Courts to enquire whether the rents paid by them have been paid *boná fide* by the majority of the raiyats. Enquiry into payment for three consecutive years is not necessary for the decision of such a suit. *Boná fide* payment of rent for a single year is enough to enable the Court to decree a suit for enhancement on these grounds. In other words, I move that the restriction as to proof of three years' payment be removed."

The Hon'ble SIR STEUART BAYLEY said :—"I must ask the Council to reject this amendment. It was explained by my hon'ble friend Mr. Reynolds and by His Honour the Lieutenant-Governor yesterday that a prevailing rate is frequently manufactured by *bogus* kabúliyats, that is, a raiyat undertakes to pay a rate of rent which he does not in reality ever intend to pay with the object of proving a high rate in a suit brought against another raiyat. Our object is to show that the rate which ought to be proved is not a rate of this kind, but the actual existing rate, and payment for three years is considered to be good and sufficient proof to afford protection against colourable agreement."

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that in line 2 of clause (*a*) of section 31, for the word "rates" the word "rate" be substituted.

The amendment was put and negatived.

The Hon'ble MR. HUNTER moved, on behalf of the Hon'ble Mr. Amír Alí, that section 32 of the Bill be omitted. He said :—"My Lord, this section was so fully considered in the Select Committee, that it would not be right for me to detain the Council by offering any further remarks upon it."

The Hon'ble MR. REYNOLDS said :—"This matter was discussed at length by the Committee, and I do not think the decision come to should be disturbed."

The Hon'ble MR. HUNTER said :—"My Lord, speaking for myself, I also hope the Council will not disturb the arrangement."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in clause (*a*) of section 32, for the words "the decennial period" the words "a period of three years" be substituted. He said :—"The section requires that, for the purpose of determining what is the average price of grain for the purpose of working the rule of proportion, the Court must take the average of the immediately preceding ten years. This, I submit, will not only be a work of difficulty and add to the delay and expense of enquiry, but it will in many cases tend to reduce the amount of enhancement which the landlord will be clearly entitled to get. I think that a much shorter period, say three years, will be a reasonable period for striking an average to work the rule of proportion."

The Hon'ble MR. REYNOLDS said :—"This question was discussed at some length in Select Committee. Originally the term of five years was inserted in the Bill, and it was urged that the period of five years was too short, and concrete examples were given in which it would work injustice, in some cases to one party and in some cases to the other. We, therefore, agreed to the decennial period, but at the same time we added clause (*c*) to enable the Court to take a shorter period in case it was impracticable to take the decennial period."

The Hon'ble MR. HUNTER said :—"My Lord, I too hope that the Council will not alter the term of years fixed by the Select Committee. There are cases in which it would be almost impossible to take a period shorter than ten years. The hon'ble mover of the amendment suggests three years. I would ask him whether, during a year of famine or in the two years following, enhancement of rent should be granted against a tenant on the ground of the rise of prices? The high prices caused by famine after extend over three years. There is really no answer to this. The result of substituting three years for ten years would be that after a period of famine, and while the cultivators were reduced to the last stage of weakness and misery for want of food, a legal system of enhancement (based on the sufferings of the tenants) could be pushed on throughout the famine-stricken districts."

The Hon'ble SIR STEUART BAYLEY said :—"I quite agree with my hon'ble friend Mr. Hunter. It was on his suggestion, and after going into statistics to show how prices varied from year to year and how they were affected for some time after a bad year, that the decennial period was adopted. Nothing is more striking than the slowness with which prices fall after a calamity of that sort, notwithstanding that the harvests have been abundant in the subsequent years. We thought it best to counteract the operation of such special years by taking a large average."

The amendment was put and negatived.

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in lines 3 to 6 of clause (*b*) of section 32, the words from "reduced by one-third," &c., to "purposes of comparison" be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in lines 6 to 10 of clause (*b*) of section 32, the words commencing with "provided" be omitted. He said :—"This proviso is based on an entire misconception of the actual state of facts. It takes for granted that in every case, whenever there is a rise in the value of produce, there is a greater proportionate rise in the cost of cultivation. In the voluminous literature on the subject there is not a single statement by any officer to the effect that the rise in the cost of cultivation is in any greater proportion than the rise in the price of produce. Unless that statement can be proved, countenance should not be given to a provision like this which takes the fact to be assumed. There are three contingencies with reference to this matter—first, the cost of cultivation may increase in the same ratio as the cost of produce, in which case the rule of proportion will work equitably without any reduction on the ground of the increased cost of cultivation, because it will leave the raiyat not only a proportionate increase of profits but also give him a proportionate increase in the cost of cultivation. If the cost of cultivation is increased in less proportion, it will give the raiyat greater profit, the landlord less. It is only in the third case, where the cost of cultivation has increased in a much greater ratio than the price of produce, that the rule of proportion will work hardly on the raiyat. Unless the Council has before it evidence to show that the cost of production had increased in any greater ratio than the price of produce, I submit it will be unfair to make a provision like this. In my dissent I explained my meaning by a hypothetical case. Suppose the price of produce of a bíghá of land to be Rs. 8 and the rent Rs. 3, the cost of production Rs. 3 and the profit to the raiyat Rs. 2. Then, if the price rises to Rs. 10, by the rule of proportion the amount of the enhanced rent will be Rs. 3-12, the cost of produce will be Rs. 3-12 and the profit to the raiyat will be Re. 2-8; so that every case in which there is a rise in the value of produce the rule of proportion contemplates a proportionate rise not only in the profits of the raiyat but also a proportionate rise in the costs of cultivation. It is on these grounds that the 15 Judges, in laying down the rule of proportion, distinctly said that the cost of cultivation was not to be taken into account, because it may for all practical purposes be taken for granted that there is a proportionate rise in the cost of cultivation with a rise in the value of produce."

The Hon'ble MR. REYNOLDS said :—"I think the hon'ble member asks too much when he asks the Council not to pass this clause unless it is prepared to show that the cost of production tends to increase more rapidly than the price of produce. It is because it is so difficult to prove the cost of production that all schemes for enhancement on this basis must fall through. There is reason to believe that the cost of production has a tendency to increase in a greater ratio to the rise in price; and if this is the tendency in a considerable proportion of cases we ought to give the raiyat the benefit of the doubt and make the rule general, because we have no data to show to what exact number it will or will not apply. I join issue with the hon'ble member in the hypothetical case of a tenant whose gross produce is Rs. 8, the rent Rs. 3, the cost of production Rs. 3, and his profit Rs. 2. Considering that the average size of holdings in this province is five bíghás, the raiyat in that case will have an annual profit of Rs. 10 on the whole area of his holding. I put it to the Council whether a man in that posi-

tion ought to be enhanced at all, and, if at all, whether the enhancement should not be fenced round with modifications of this kind, so as to give the tenant a fair chance of having sufficient left to him to live upon."

The Hon'ble MR. HUNTER said :—"My Lord, I regret that my hon'ble friend has again raised this question, but I am prepared to meet his amendment with a direct statement of figures, which I hope will be convincing to this Council. The hon'ble member complains that to deduct one-third from the rise in prices, as an allowance for the increased cost of cultivation, would seriously diminish the enhancement of rent. Let me commend to my hon'ble friend's notice the following concrete case :—If a holding at an old rent of Rs. 12 yielded at old prices Rs. 30 worth of produce, and the value of produce were to increase to Rs. 60 or double, then, deducting one-third of the excess value, the proportion would be as follows. As the old value (Rs. 30) is to the new value less one-third of the increase (Rs. 50), so will be the old rent (Rs. 12) to the new rent. The new rent, therefore, would be Rs. 20, and I feel sure that my hon'ble friend would not, in his own estates, desire to raise the rent of any tenant by a higher proportion on the ground of a rise in prices. I should feel confident, my Lord, to leave the matter without further comment, if only my hon'ble friend were concerned; because I know his fairness of dealing with his tenants. But, as there are perhaps others who cannot be answered by this *argumentum ad hominem*, I wish to add one other observation. Underlying this particular question of a one-third deduction of the increase, is the general question as to the division of the unearned increment occasioned by a rise in prices. The hon'ble member's amendment would give the whole unearned increment to the landlord. The Bill divides the unearned increment between the landlord and the tenant. The exact proportion of two-thirds to the landlord and one-third to the tenant, as given by the Bill, was decided on after long and mature consideration. I think it is a fair division, and I would, therefore, oppose any attempt to now re-open the question."

The Hon'ble SIR STEUART BAYLEY said :—"My hon'ble friend Mr. Hunter has left me very little to say, for he has stated exactly the line I was prepared to take. I explained in my opening speech how the cost of cultivation tends in this country to increase in a more rapid ratio than the price of produce, and how it acts on the raiyat. Most of the labour is done here by the raiyat or his family, or, where outside labourers are employed, they are paid in grain. On the other hand, what are the other elements which enter into the cost of cultivation beyond the labour used? The principal cost is for cattle, ploughs, manure, &c. Now, while pasturage land is daily diminishing owing to the pressure of population, the cost of keeping cattle is increasing, so much so that within the last few years the raiyats are growing crops for their cattle. For the same reason manure is also becoming dearer, and this adds to the cost of cultivation. What my hon'ble friend said is very true, that the principle underlying the question is that of the unearned increment—in what proportion it should be divided. The Government of Bengal in the letter of the 15th September proposed a deduction of one-half; the Committee decided upon allowing one-third. The fact that the Courts cannot ascertain what the cost of cultivation is, and consequently what proportion of the increase of price should be deducted, is an accepted fact; therefore an arbitrary proportion must be taken, and the question is, where the line is to be drawn. The question has been carefully worked out in the report of the Rent Commission. I will read two extracts from their report. They said :—

'The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place, the coinage consists of silver, and the relative value of

silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes.'

"Then they go on to consider how the unearned increment is to be divided. They said :—

'In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zamíndár nor the raiyat, but by general causes, the reasoning used above (§55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule * * * will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the raiyat and the remaining one-third to the landlord.'

"It will be seen that while some members of the Rent Commission thought the raiyat should have two-thirds and the zamíndár one-third of the increment, the majority came to the same conclusion as the Government of Bengal that it should be equally divided. We have after fully considering all opinions come to the conclusion that one-third should be deducted for increased cost of cultivation, and that the rent should then be increased in full proportion to the increase of prices."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI by leave withdrew the amendment that clause (*c*) of section 32 be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in section 33, line 4, after the word "improvement" the words "made after the commencement of this Act" be inserted. He said :—"My reason is that zamíndárs who before the passing of this Act did not think of registering improvements made by them will be unable to get any enhancement on those improvements."

The Hon'ble MR. REYNOLDS said :—"I think the hon'ble member overlooks the effect of section 80, which provides for improvements made before the passing of the Act; the present amendment is therefore not required."

The Hon'ble SIR STUART BAYLEY said :—"Section 80 was inserted to meet the case to which the hon'ble mover has referred. If, therefore, the words proposed are inserted in section 33, there will be no ground for inserting that section."

The amendment was then by leave withdrawn.

The Hon'ble MR. GIBBON moved that section 35 be omitted. He said :—"I will call the attention of the Council to the wording of this section. It says that—

"Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable."

"The first portion of the section allows the Judge a discretionary power to overrule the law. Section 7 gives the Court directions as to what shall be considered fair and equitable. It allows the Court to decree enhancement when the rent paid is below the customary rates paid by other people. Sub-section (*2*) gives an absolute discretion to the Courts only to allow enhancement when the Court considers it fair and equitable. Section 8 goes further. It allows the Court, in cases where it considers that immediate enhancement will fall hardly on a tenure-holder, to allow the enhancement to be made gradually. Section 30 and the following sections lay down the ground upon which occupancy-holdings may be enhanced, and it lays down rules to guide the Court as to what is fair and equitable. Section 36, which we have not yet come to, allows the Court, where the immediate enforcement of a decree for enhancement in its full extent will be attended with hardship to the raiyat, to be carried out gradually. Therefore to declare that the Court shall not in any case decree an enhancement which

under the circumstances it considers unfair and inequitable, is unnecessary. It allows the presiding officer, when the bias of his mind tends that way, to ignore the provisions of the Act and follow the bent of his mind; it will give him an excuse to set aside the provisions of the Act. Where it suits the bias of his mind he may, whenever he pleases, set aside the law. We are giving to all judicial officers, even the most inexperienced, a power which the most experienced may hesitate to exercise. The reason to my mind must be cogent, the necessity very great, before we allow a Judge sitting in Court to override the provisions of the law."

The Hon'ble SIR STEUART BAYLEY said:—"I am not prepared to accept the amendment. The principle that all rents decreed by the Court should be fair and equitable has no doubt been accepted by the Council, but it is not the case that each ground of enhancement carries with it the limit beyond which the law would deem enhancement unfair and inequitable. In its previous stages the Bill provided a maximum, but when the maximum limit was removed, it was provided by one general clause that where the rent decreed, although coming under the rules prescribed by the law, are unfair and inequitable under the specific circumstances, it should not be decreed by the Court: the special circumstances should be taken into consideration. That is the meaning of the section. I know my hon'ble friend will not wish any Court to decree what it does not think fair and equitable. The object of the section is to enable the Court to act by its judgment in the matter. I don't think there is danger that the Courts will be misled by the discretion, because there will always be an appeal to the High Court; the High Court will soon call to order any Judge who exercises his discretion in an improper manner. It is a judicial discretion."

The amendment was put and negatived.

The Hon'ble MR. HUNTER, on behalf of the Hon'ble Mr. Amir Ali, by leave withdrew the amendment that in line 6 of section 35, after the word "inequitable" the following words be inserted:—

"or which would entitle the landlord to recover in the aggregate more than one-fifth of the average value of the gross produce of the land in staple food-crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the following amendments:—

That section 37 of the Bill be omitted.

That, in the event of his last preceding amendment not being carried, in lines 7 and 10 of sub-section (*l*) of section 37, for the words "fifteen years" the words "five years" be substituted.

That in lines 15 and 16 of sub-section (*l*) of section 37, the words "or dismissing the suit on the merits" be omitted.

That in section 38, clause (*b*), line 3, for the words "average local prices of staple food-crops" the words "in the value of the produce of the land" be substituted.

That in section 39, sub-section (*3*), line 6, for the words "one month" the words "two months" be substituted.

That in line 2 of sub-section (*4*) of section 39, after the words "Board of Revenue" the words "after hearing any of the interested parties who might have duly entered appearance" be added.

The Hon'ble MR. HUNTER moved that in sub-section (*6*) of section 39, for the words "shown thereby" the words "shewn in the lists prepared for any year subsequent to the passing of this Act" be substituted. He said:—"My Lord, this Bill will substitute a new and sharp procedure for the enhancement and reduction of rents in place of an old and a complicated one. Under the existing law, such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of the produce. In order to obtain an enhancement on this ground, the landlord had first to prove

an increase in the selling prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the increased prices to the actual produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complex factors at present and in time past. The present Bill substitutes for this difficult and complicated process the simple question of a rise or fall in the prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is that enhancements which were not practicable on this ground will now become practicable. But the Bill further simplifies the burden of proof. In the first place, it confines the question to the prices, not of the actual produce of the land, but of certain staple food-crops; in the second place, it provides for the publication of price-lists in the official Gazette, which lists are to be accepted by the Courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point.

"The Bill originally proposed that these lists should be taken as conclusive evidence. It appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill as now revised accords only the value of presumptive evidence to these lists. In doing so, however, I would again urge on my colleagues that we have given the same legal value to two classes of evidence, of which the real value is essentially different. For the lists to be published in the official Gazette are of two distinct classes—old lists of prices collected under no adequate safeguards for their accuracy, and new lists of prices to be collected under the very efficient safeguards provided by this Bill. I believe that the future lists to be compiled under those safeguards will be worthy of acceptance as presumptive evidence. But my enquiries show that the old lists, collected without any of those safeguards, cannot safely be accepted as presumptive evidence. At a late stage in the deliberations of the Select Committee, a decennial period was substituted in place of a quinquennial period; so that the figures submitted to the Committee only enable me to show what would be the results of accepting the price lists for the quinquennial periods originally contemplated. If, then, we take the price-lists submitted to the Committee for quinquennial periods, they curiously conflicting different results in adjoining districts—districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of silver, and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Húgli river would give an enhancement of 12 per cent. in the Bardwán district; and an enhancement of 28 per cent. in the Nadiyá district on the other side. Further up the Ganges the enhancement would be 10 per cent. in the Patna district on the southern bank, and close on 20 per cent. in the Muzaffarpur district on the northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent. in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating from the price-lists of rice alone. If we endeavour to correct their discrepancies by adding a second crop to the calculation, say maize, as the Local Government will do under the provisions of this Bill, we get still more astonishing results. In the Bhagalpur district, rents would be enhanced 25 per cent. if calculated on the average prices of rice submitted to the Committee; but they would be reduced 46 per cent. if calculated on the price-lists of maize. In the next district but one to the west, Muzaffarpur, rents would, on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates; but they would be reduced about 22 per cent. if estimated in maize rates. In the Patna district, which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhagalpur, nor 22 per cent. as in Muzaffarpur, but only 2 per cent. These results are worked out from the figures submitted on behalf of the Bengal Government to the Select Committee. I am aware that they are incomplete, and that they would be revised before they

were published in the Gazette. But, after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give to them the value of presumptive evidence. I would ask the Council, therefore, while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had under the Evidence Act at the time when they were collected: that is to say, they shall be held by the Courts to be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zamíndárs, nor on behalf of the raiyats, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants—a double-edged weapon—which may produce startling results both in the enhancement and in the reduction of rents."

The Hon'ble SIR STEUART BAYLEY said:—"We are prepared to accept this amendment in substance subject to re-consideration as to the wording of it"

The amendment was put and agreed to.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in sub-section (*7*) of section 39, line 1, for the words "Local Government" the words "High Court" be substituted.

The consideration of the following amendments was temporarily postponed:—

(1) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that section 40 be omitted.

(2) The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI to move that section 40 be omitted.

(3) The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA to move that, if his last preceding amendment be not carried, in sub section (*1*) of section 40, lines 2 to 6, the words from "or on the estimated value," &c., to "partly in another" be omitted.

Also to move that in sub-section (*1*) of section 40, lines 6 and 7, for the words "either the raiyat or his landlord" the words "the raiyat and his landlord" be substituted.

Also to move that for sub-section (*2*) of section 40 the following be substituted, namely:—

"The application may be made to the Civil Court."

Also to move that for section 40, sub-section (*3*), and sub-section (*4*), clauses (*a*) and (*b*), the following be substituted, namely:—

"On receipt of the application the Court shall ascertain the description and quantity of the rent in kind paid or payable for the last preceding ten years, and the tenants shall pay in future each year the amount in money which would purchase the same description and quantity of produce at the average prices prevailing for the same in the locality for the five years immediately preceding that for which payment is made."

Also to move that in sub-section (*5*) of section 40, in line 5, for the words "revenue proceeding" the words "civil suit" be substituted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that section 43 be omitted.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I support the motion. The new rights which the Bill contemplates giving to non-occupancy-raiyats have necessitated the introduction of a number of new sections simply to give them protection in certain exceptional cases where the zamíndárs have not protected themselves by agreements. It is these cases only that the provisions of the Bill, commencing with section 43 and ending with clause (10) of section 46, deal with. It introduces a system which is entirely unknown to this country, and the entire procedure is both cumbersome and expensive as well to landlords and raiyats. I submit that for the purpose of a few exceptional cases such a cumbrous and expensive procedure, and one altogether unknown to the country, may well be dispensed with."

The Hon'ble RAO SAHEB VISHNANATH NARAYAN MANDLIK said :—"This is a very novel provision. Mr. Field said :—

'I am unable to see the justice of the restrictions proposed to be placed on the enhancement of rent of non-occupancy-raiyats.'

"This new legislative creation is a tenant-at-will, and it strikes me that the direct result of these provisions will be to increase the number of day-labourers and to decrease the number of these new creations. I say new creations advisedly, because the High Court has ruled in the case of occupancy-raiyats what their privileges are, and according to what Mr. Field says, both in the work on which the Rent Commission proceeded and in his work on land-laws generally, it seems the legislature so late as 1859 and 1869 have left this new question untouched. I cannot understand what equitable rights a man can have who takes land on certain definite terms. I therefore support the amendment."

The Hon'ble MR. REYNOLDS said :—"We are hardly in a position to discuss this amendment until the amendment of section 29 has been settled. It is not definitely stated that the provisions of section 29 are to extend to this chapter. I contend that these provisions are right and proper. The assertion that a non-occupancy-raiyat is a mere tenant-at-will raises a very large question. If we admit the general principle, which, I think, we should, that it is desirable to regulate enhancements, I am aware of no reason why it should not be extended to non-occupancy as well as occupancy-raiyats. With regard to section 46, we leave enhancements out of Court entirely to arrangement; the only protection we give to the non-occupancy-raiyat is that, if he refuses to agree to the enhancement proposed, we give him the liberty to claim a five years' judicial lease. I think it very reasonable that he should have that consideration granted to him. It has been all along put forward as an object of our legislation to extend the occupancy-right as far as possible, and this section and section 46 do not go unreasonably far. I should be sorry to see any alteration made in section 43."

The Hon'ble MR. GIBBON said :—"I may say briefly that I do not approve of the motion. I approve of the section as it stands. The occupancy-raiyat is in a different position to the non-occupancy-raiyat. The occupancy-raiyat is not compelled under any portion of the Bill to enter into any written engagement with the landlord. If his position is disputed by the landlord, he can appeal to the provisions of the Bill to have the terms and conditions of his holding determined. When a non-occupancy-raiyat is let into possession of land, he may be let in under a written agreement; at the end of that agreement he may have his rent enhanced or adjudicated; and if it is to be adjudicated the procedure for such adjudication is laid down. If the landlord and the non-occupancy-raiyat come to terms amongst themselves, it is very necessary that the landlord should at once put into writing the terms on which the tenant holds the land. It is not necessary that it should be alleged that he held for three years without written agreement, in order that his holding should be binding. If his holding is by verbal arrangement, he can reject any claim for enhancement and claim an adjudication of rent for five years. I cannot see what effect the provisions of section 29 will have on this section. I maintain that the section is right in principle and will be equitable in practice and should be retained."

His Honour THE LIEUTENANT-GOVERNOR said :—"I also oppose the motion. The non-occupancy-raiyat has not a satisfactory position. He enters on land on such terms as he can settle with the landlord, and it is quite in the power of the landlord when the term of his engagement expires to eviet him under section 44, clause (*c*). But if the landlord demands enhanced rent, section 43 comes into operation, and the raiyat is obliged either to agree to the terms proposed or to the rent determined by the Court, for which section 46 provides. Considering that the object which the majority of the Select Committee have always had in view, of affording some measure of protection to the non-

occupancy-raiyat, I think it is necessary for the future relations of landlord and tenant that this section should be allowed to stand."

The Hon'ble SIR STEUART BAYLEY said :—"I agree with His Honour the Lieutenant-Governor as to the necessity of supporting the rights of non-occupancy-raiyats. It has all along been one of the objects of the Government of India in introducing this Bill to provide a certain amount of modified security in the position of non-occupancy-raiyats. As I said on a previous occasion, the strength and security which our Bill gives to non-occupancy-raiyats is very far short of that given to occupancy-raiyats, but is in advance of the present law, and has been deliberately made. The particular section which we are asked to remove is one which provides that the rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement under section 46. I cannot accept this amendment as it stands. It is rather premature to discuss the bearings of the clause which I propose to insert in section 29, but I cannot avoid following the hon'ble mover of the amendment by saying a few words. If we accept the principle of part-performance for one class of raiyats, the same considerations point to its being accepted for the other class. The effect of this is worth considering. It means that after the initial lease of the non-occupancy-raiyat expires, if his rent is enhanced verbally, the landlord would not sue for the enhanced rent except on proof that the raiyat had paid for three years. The result would be to facilitate the growth of occupancy-rights, for first comes the period of the initial lease, then the admission of three years' subsequent occupation, and then, if the enhancement is contested, will come in the provisions of a judicial lease for five years. I propose therefore that, when the discussion comes on on the amended section 29, the hon'ble member should say whether he desires to introduce a similar clause in this chapter. If he does, I shall of course be prepared to accept it. In the meantime I must protest against the acceptance of the amendment before the Council."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that in section 43 the words and figures "or by agreement under section 46" be omitted. He said :—"I have already submitted the arguments in connection with this amendment in my speech on the preceding amendment."

The amendment was put and negatived.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA by leave withdrew the amendment that in clause (*b*) of section 44, line 4, the words "consistent with this Act, and" be omitted.

The Hon'ble THE MAHÁRÁJÁ OF DURBHUNGA moved that in clause (*c*) of section 44, line 2, the word "registered" be omitted. He said :—"The reason is that there is no registered lease."

The amendment was put and negatived.

The Hon'ble MR. REYNOLDS moved that in clause (*c*) of section 44, after the words "registered lease" the words "for a term of not less than five years" be inserted. He said :—"I need not detain the Council with any detailed or elaborate argument in support of this amendment. The position of the non-occupancy-raiyat is this, that he has to pay the rent agreed upon, and if admitted to occupation on a registered contract he may be ejected on the ground that the term has expired. There is no stipulation or arrangement in the wording of the Bill as to the term for which the initial lease ought to be granted, but I believe it will be generally considered that the grant of a lease for a reasonable term of years ought to be encouraged, and my position is strengthened by one of the dissents, in which it is remarked that the effect of the operation of some of the provisions of this chapter will be to place the non-occupancy-raiyat in a worse position than at present; the landlord, having an absolute right to eject him, will in every case grant a lease for a short period and reduce the non-occupancy-raiyat to a mere tenant-at-will. That will be guarded against to a certain extent by this amendment that the initial lease shall be in every case for a

period of not less than five years. If the landlord desires to take advantage of the clause which permits him to eject the raiyat at the expiration of the lease, the lease originally given should not be for less than five years."

The Hon'ble MR. QUINTON said :—"I think this proposal is worthy of support. The hon'ble member in charge of the Bill has said that one of the objects of the Bill is to give a greater degree of protection to the non-occupancy-raiyat than what he enjoys under the existing law, and there have been, since this legislation commenced, various schemes proposed to give effect to it. The main protection proposed to be given is that where the landlord wishes to enhance the rent he must give notice, and if the tenant refuses to pay the enhanced rent the landlord can demand such rent as the Court thinks fit for five years. This is undoubtedly a great protection beyond what he enjoys under the existing law. But it appears to me that if the power of ejectment stands as it is now, that the landlord may turn him out on the expiration of the lease by a mere notice to quit, the landlord can nullify all the clauses of this chapter by giving the necessary notice. I think therefore that the chapter as it stands is open to the objection that the protection it holds out can be defeated by such means."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I think this amendment will give non-occupancy-raiyats what they not only never possessed but will convert them into something like occupancy-raiyats, giving them a right to hold for at least five years, although the zámindár may wish to let in a raiyat for only a year or two for a mere temporary purpose. If the raiyat does not agree to such short term, the lessee will have the option to reject the engagement and to apply to some other landlord, or to come to some other arrangement with his landlord. But there is no reason why to a raiyat who has admittedly no rights whatever the landholder should be forced to give a lease extending for at least five years, and if he does not do so he will have no right to eject the tenant. Nothing that has been placed before the Council justifies or warrants a provision of this kind."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"Provisions like this will defeat the very object for which they are enacted, and I trust the amendment now proposed will not be accepted by the Council."

The Hon'ble MR. HUNTER said :—"My Lord, I oppose this amendment. I believe that it strikes at one of the fundamental principles of the Bill, namely, the distinction between the occupancy and non-occupancy raiyat. The Bill makes provision for the very effective protection of the occupancy-raiyat; it also provides for the development of the non-occupancy-tenant into an occupancy-raiyat. But one of the principles which I personally laid stress on from the commencement, was the recognition of the initial freedom of contract between a landlord and a new tenant. After much discussion this principle was accepted by the Select Committee, and the initial freedom of contract between a landlord and a new tenant was formally affirmed by that body. I regard this amendment as an attempt to indirectly weaken the effect of the decision thus arrived at. I do not think that the amendment is justified either by the position of the non-occupancy-tenant in the past, nor by the status which he actually possesses at present. Further, I think that it would be at once impolitic and unjust, at the present late stage of the measure, to introduce a provision which would seriously curtail the acknowledged rights of the zamíndárs in regard to a large class of tenants."

The Hon'ble MR. GIBBON said :—"I also oppose the amendment."

His HONOUR THE LIEUTENANT-GOVERNOR said :—"I support this amendment because it gives to the non-occupancy-raiyat a securer position than the Bill as it stands will give him. I may be allowed to allude here to a part of the opening speech of my hon'ble friend Sir Steuart Bayley that my words and action in a previous debate on this measure are inconsistent with the position I

now assume. I stated, if I remember rightly, in the discussion of the Bill last year that there was a wide distinction between the position of the occupancy and that of the non-occupancy raiyat, and I am prepared to stand by that doctrine. Now when I made that statement I was arguing against the proposal of the Government of India in its recommendation to the Secretary of State, that the whole distinction between rights of occupancy and non-occupancy should be abolished; that legislation should proceed on the basis of not recognizing any distinction between the two classes; that we should begin from the recognition of all raiyats being in the same position. My contention was that any legislation based upon such a theory was wrong as being contrary to the practice recognised since the Permanent Settlement. I urged that every Collector in the country would tell you that non-occupancy-raiyats do not stand in the same privileged status and position as the raiyat who has occupancy-rights, and I felt sure that, if legislation on the wide basis proposed by the Government of India was attempted the difficulties connected with legislation on the subject would be very greatly enhanced. I would appeal to hon'ble members whether, in dealing with a Bill which ignored any distinction between the two classes, the difficulties would not be very much more serious than now when we recognise such difference; and I may claim the support of those hon'ble members against whose interests I am supposed to have acted whether I have not, in this matter at any rate, represented the principle which they accept. The words in which I entered my respectful protest against the recommendations of the Government of India can be quoted, and, to say the truth, I am rather proud of the fact that the decision of the Secretary of State was in accordance with the views which I held. But it is quite a different thing that, while you recognise a distinction between the two classes of raiyats, you still can recognise the necessity that the non-occupancy-raiyat should have facilities placed in his way which will enable him to grow into an occupancy-raiyat; and in dealing with the subject I have never varied from the expression of the hope that this legislation would put such facilities in the way of the non-occupancy-raiyat not only in his own interests but in the interests of the zamíndár. All the provisions which have ever been contemplated to secure his status by means of compensation for disturbance, judicial leases or otherwise came not from me nor, as far I am aware, from any particular member of this legislature, but originally from the report of the Famine Commission. As the Bill has come out of the hands of the Select Committee, I do not think the non-occupancy-raiyat has been secured in the position which I would desire him to have; and anything therefore which has a tendency to improve his position, to enable him to reap the fruits of his industry and to secure with the acquiescence of the zamíndár his growth into the position of an occupancy-raiyat deserves the favourable consideration of the Council. If therefore the Council see their way to accept the proposal that the initial lease should be for a term of not less than five years I shall be glad; because while the zamíndár will still have the right of eviction, he will gain thereby an opportunity of seeing whether he has got a good tenant or a bad one.

The Hon'ble SIR STUART BAYLEY said:—"I have rarely had more difficulty in making up my mind on any point than on that now before the Council. But before I deal directly with the question you are asked to vote upon, I wish to offer a few remarks with reference to what has just fallen from His Honour the Lieutenant-Governor. I must venture respectfully to correct a misapprehension into which His Honour has fallen. In my opening speech I was quoting from what the Lieutenant-Governor said in the debate in this Council two years ago after the Bill drawn in accordance with the Secretary of State's views had been introduced. I was certainly not guilty of quoting from any paper which His Honour may have written protesting against the letter of the Government of India of March, 1881. No such paper has been published, and if it exists I could not with propriety have referred to it. The particular expressions which I used were out of the above speech, in which he dissented to the compensation for disturbance scheme in regard to non-occupancy-raiyats, on the ground that the non-occupancy-raiyat had no rights. I only wish to correct this misapprehension.

"Coming now to the actual point before the Council, the arguments on the two sides respectively appear to be these. We want the non-occupancy-raiyat to have the chance of acquiring the occupancy-right. At the same time we want not to take away from the zamíndár all power of selecting a good raiyat, and all power of regulating the rents of his raiyats. In respect of the former I have always supported the position that the zamíndár should have the power to eject a raiyat at the end of an initial lease. Unless you give him that right I do not see how, if he lets in accidentally an unsatisfactory, cantankerous or turbulent man, he is to get rid of him. I think it is fair he should have some selection in the first letting of his land. On the other hand, we want the occupancy-right to accrue in the hands of the non-occupancy-raiyat. I have not supposed that zamíndárs will, as a rule, be anxious to eject the raiyat at the end of the initial lease. I would still believe, in spite of what the hon'ble member has said in his dissent, to the effect that in all cases the zamíndár would give a one year's lease in order to be able to eject the raiyat when he pleases, yet wiser counsels will prevail and that he will see that it is not for his interest to do so. I may mention also that the question of giving a long lease in the first instance was urged upon us by high authority, and it was considered a good deal by the Select Committee, but it was not accepted at the time. It was considered, I must confess, not so much with regard to the question of ejectment at the end of the time, as with regard to the question of compensation for disturbance. The principle of the proposal was that a non-occupancy-raiyat ought either to have a long lease or, if he only received a short one, then he ought to have compensation for disturbance. But compensation for disturbance fell through. Now the question has to be decided, is it an object to leave the zamíndár a right to select his raiyat, and to say for how long he shall have a lease in the first instance, or that we should tie his hands and say 'You shall not have a raiyat for less than five years'? I have great difficulty in making up my mind, as anybody's decision will depend upon whether he thinks the old rights of the zamíndár ought to be retained, or that the necessity of supporting the raiyat is of paramount importance. On the whole, I think we ought not to overthrow the rights of the zamíndár, and I think we have given the raiyat a fair chance of becoming an occupancy-raiyat. I am afraid also that the specific safeguard, even if unobjectionable in principle, could so easily be evaded as to be valueless. On the whole therefore I incline to vote against the amendment."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved that for clause (*d*) of section 44 the following be substituted :—

"on the ground that he has refused to agree to pay enhanced rent at a rate not exceeding double the rate of rent paid by him during the preceding five years".

He said :—"This is offered to the Council as an alternative for the expensive and tedious procedure contained in the Bill. I think it will afford sufficient protection against capricious enhancement of rent and ejectment on the ground of refusal to pay enhanced rent. This double limit is the limit which was from the time of the Rent Commission suggested as a reasonable provision not only for non-occupancy but for occupancy-raiyats."

The Hon'ble SIR STUART BAYLEY said :—"The amendment means that we should get rid of the judicial lease. Now, this judicial lease is really an essential part of the protection given to the non-occupancy-raiyat, and, whatever value may be attached to the protection as it stands, I quite agree with those who think the protection will not be worth anything if a judicial lease is not permitted when the non-occupancy-raiyat's rent is enhanced by the Court. I therefore oppose the amendment."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEARI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that in section 44 the following be added as a ground for eviction :—

"(*e*) on the ground that he has committed waste or caused the deterioration of the soil."

He said :—"It has been settled by the Council with reference to the occupancy-raiyat that even he may not be allowed to commit with impunity waste on the land or cause deterioration of the soil. If the non-occupancy-raiyat, whose legal status and rights are much inferior to those of the occupancy-raiyat, does these things, I cannot think it reasonable that the Bill should contain no provision for such cases."

The Hon'ble SIR STEUART BAYLEY said :—"I think the Council decided yesterday that the proper penalty in such cases was not eviction but a suit for damages or for an injunction. 'Waste' was a word which had absolutely no meaning as applied to cultivation in this country. Why! the whole process of agriculture in this country has been described by a great authority as one of 'spoliation of the land'. All cultivation here, if compared with the English method, would be regarded as waste, and the use of the word would introduce an extraordinary amount of uncertainty and litigation."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that to section 44 the following be added as a ground for eviction :—

"on the ground that he has, without his landlord's consent in writing, sub-divided or sub-let his holding or any part thereof, save as expressly authorised by this Act".

He said :—"Both the Government of India and the Secretary of State have recommended that sub-letting should be discouraged. The evils of the institution are well known. If it be held an objectionable practice in the case of occupancy-raiyats, how much more so it must be in the case of non-occupancy-raiyats. Even the friends of the raiyats have urged on the legislature the necessity of provisions for preventing the evils of sub-letting, and I find that it was one of the institutions which the Famine Commission very strongly condemned in their report."

The Hon'ble MR. REYNOLDS said :—"I think the question of sub-letting is sufficiently provided for by section 85, and that of sub-division by section 88."

The Hon'ble SIR STEUART BAYLEY said :—"Sub-division is absolutely invalid without the landlord's consent in writing, and sub-letting is only validated under certain very exceptional circumstances under a registered lease."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I wish to point out that the provisions as to sub-letting in section 85 apply only to occupancy-raiyats, because, although the word 'raiyat' has not been qualified, the provision which it contains that a sub-lease may extend to nine years is inconsistent with the position of a non-occupancy-raiyat in the Bill."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on behalf of the Hon'ble the Mahárájá of Durbhunga, that to section 44 the following be added as a ground for eviction :—

"on the ground that he has disclaimed the title of his landlord before any public officer or Court".

He said :—"The result of the judicial decisions have established that in Bengal as in England a tenant disclaiming his landlord's title forfeits his tenancy. The amendment fairly summarises the results of the judicial decisions. As to the equity of the principle there can be no doubt. Nor do I see any objection on the score of principle to enacting it. A tenant can never be harrassed by false claims in this respect, for the disclaimer is entirely his own act, and unless it is reduced to writing by a proper authority he cannot be proceeded against in respect thereof. The necessity for enacting such a provision for the protection of the landlord is clear. In questions of boundary disputes or disputed title, it is common for tenants to be won

over by the rival party who may not really be in possession. In common rent-suits raiyats thus gained over raise issues of title and plead adverse possession. The whole question of title is fought out as a side issue. We are sure this hon'ble Council has no sympathy with such dishonest tenants or with the unnecessary and reprehensible fostering of litigation. In Bengal the consequences of such disclaimer are very effective checks upon false claims to hold land as rent-free, which, in the present state of the law, it is very difficult for the land-holder to disprove. Justice and expediency alike demand that the judge-made law on the subject should not be repealed by implication."

The Hon'ble MR. REYNOLDS said :—"I think if the hon'ble member desired to raise this question it should have been raised in connection with section 25. Notice of a similar amendment was given and withdrawn, and I was under the belief that it was withdrawn because the position was untenable."

The Hon'ble MR. ILBERT said :—" I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-books. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it the Courts regard it with disfavour and limit its application in every possible way.

"And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well-known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite land-marks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section enabled a tenant who entertains a *bonâ fide* doubt as to the person entitled to his rent to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court. And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land in his possession rent at a rate to be fixed by the Court. By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants, and I am not prepared to go further."

The amendment was put and negatived.

The Hon'ble BABÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, withdrew the following amendments :—

That in section 44 the following be added as a ground for eviction :—

"(*h*) on the ground that he has persistently obstructed the landlord or any person authorized by him in entering upon the holding for any lawful and reasonable purpose".

That in section 44 the following be added as a ground for eviction :—

"(*i*) on the ground that he is a person imprisoned for debt or convicted of any offence against his landlord or any resident cultivator of the village".

That in section 44 the following be added as a ground for eviction :—

"(*j*) A landlord may, in any other case, obtain a decree for eviction by giving one year's notice to quit and such compensation as the Court may consider fair and equitable under the circumstances of the case."

That in line 8 of section 45, for the words "six months" the words "one year" be substituted.

That to section 45 the following proviso be added :—

"If the landlord fails to prove the service of the notice to quit, the Court shall, on proof of his right to eject, grant to the tenant six months' time to vacate the holding from the date of the decree."

The Hon'ble MR. AMÍR ALÍ moved that after section 45 the following section be inserted :—

"Where, after receipt of such notice and before institution of suit, the raiyat expresses his willingness in writing to pay for his holding a fair and equitable rent to be determined by the Court under section 46, clause (*b*), or by arbitrators appointed by the Court or by the parties themselves, the raiyat shall be entitled to remain in occupation of his holding at the rent so determined for a term of five years from the expiration of his lease, but on the expiration of that term he shall be liable to ejectment under the condition mentioned in section 45, unless he has acquired a right of occupancy."

He said :—"I have stated in my dissent that the Bill provides no efficient safeguard against the ejectment of a non-occupancy-raiyat with a view to prevent the possibility of his acquiring an occupancy-right. To exemplify my meaning I have simply to point to clause (*c*) in section 44 which I move to omit from the Bill. It has been stated in this Council that 90 per cent. of the raiyats in Bengal possess occupancy-rights. My view is that the majority of the raiyats of Bengal, who possess occupancy-rights, possess it only by courtesy. One of the most experienced Native officers of Government in the Executive Service—I allude to Bábú Bunkim Chunder Chatterji—thus speaks on the point :—'Most of the agriculturists are tenants-at-will, and the zamíndár can eject them at his pleasure; rights of possession are in many places only chimerical; the raiyats have possession by law, but not as a fact.' My hon'ble friend Dr. Hunter, in his Statistical Account of Bengal, says that 'the husbandmen seldom change their holdings, and the same land generally descends from father to son, so that most of the cultivators may be said to have a sort of occupancy, although when a dispute occurs with the superior landlord the cultivator generally loses his case'—5 Vol., page 92. Another writer of great experience ascribes this to the fact that in the *jama-wásil-báki* papers the zamíndárs constantly change the names of the raiyats. One can easily imagine that those who believe the acquisition of occupancy-rights by the raiyats is in derogation of the right of the landlords should endeavour by every possible means to prevent the raiyats acquiring those rights. One must judge of the future always by the past. Hitherto the landlords have had recourse to illegitimate methods for the purpose of preventing the acquisition of occupancy-rights; how much more will the endeavour be repeated after the recent angry discussions? Is it likely that any raiyat once let in under a registered lease will be allowed the chance of holding that specific land or any land within the *village* for 12 years or more? In the face of what has already happened, in the face of what we hear asserted every day, it is idle to say that there are no just grounds of apprehension on this score. Every raiyat will henceforth be let in under registered leases, and will be required to give up his holding on the expiration of his lease and get other land beyond the village, and this process will henceforth take place under the countenance of the law. Will such a thing be to the eventual good of the country? I believe there cannot be two opinions regarding the beneficent results accruing from a general extension of the right of occupancy. When one considers the insecurity attached to a common tenant's position, of his consequent unwillingness to improve his cultivation, to do more than eke out a bare subsistence, the necessity for giving some substantial guarantee against frequent and arbitrary eviction will at once be realised.

"If you give some assurance to the raiyat that his holding is his own, that it would descend to his heirs, that he would not be ejected from it as long as he paid a fair and equitable rent, you furnish him with a strong motive to

develop the resources of the soil. With a view to afford the non-occupancy-raiyats some protection I beg to move the insertion of the section I have read out."

The Hon'ble MR. REYNOLDS said :—"However much I sympathise with the object of the hon'ble member, I am afraid his amendment is inconsistent with the principle, which has been already accepted, of the zamíndár's right to eject at the end of an initial lease. The Council has decided that a landlord ought to have the power to get rid of a tenant at the end of that term. But the amendment of the hon'ble member is directed to the root of that principle; therefore I think that to accept the amendment will be inconsistent with the decision of the Council."

The Hon'ble SIR STEUART BAYLEY said :—"I oppose this amendment, because it is absolutely inconsistent with the decision which the Council has just come to."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said :—"I do not withdraw my amendment that section 46 be omitted, but I think that as a necessary result of the loss of my amendment on section 45 this amendment will be also be negatived."

The amendment was put and negatived.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, moved that section 47 be omitted. He said :—"I think this section as it stands is altogether unnecessary. It simply tries to formulate a rule which is merely a rule of evidence on which the Courts would be guided by the general principles of the law of evidence. If the section is inserted, it will simply be superfluous. If a lease comes after a previous lease, it cannot be said that the raiyat has been newly admitted to occupation under the second lease. I think this question may well be left to the Courts."

The Hon'ble MR. REYNOLDS said :—"This section really seems to me one of the most practical use and value in the whole chapter. A non-occupancy-raiyat is liable to be turned out at the end of an initial lease or any subsequent lease, if he has not attained rights of occupancy. His only protection is in the possibility that the zamíndár will not take the trouble to apply to the Court. The section was retained by the Select Committee, as it gives a very practical and valuable security."

The Hon'ble SIR STEUART BAYLEY said :—"I entirely agree as to the great importance of this section. If this section were of no importance, and if the Courts would always come to the same conclusion without it, I am not sure that I understand on what grounds the hon'ble member is so anxious to expunge it. It is because it is of much value that I object to its omission."

The amendment was put and negatived.

The Hon'ble SIR STEUART BAYLEY then moved that for section 29 the following be substituted :—

"29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

"(*a*) the contract must be in writing and registered ;

"(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

"(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

"Provided as follows :—

"(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

"(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced

rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

"(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI said:—"I think the draft which has been circulated embodies the conclusions to which the Council arrived at yesterday's meeting after the debate on the Hon'ble Mr. Evans' motion. I should beg only to suggest that the provisions of this section, which applies to only occupancy-raiyats, should be extended also to non-occupancy-raiyats."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"The only point I have to suggest is that which was referred to yesterday by the Hon'ble Mr. Evans, namely, the principle which he advocated as to occupation for three years, and which is accepted by the hon'ble member in charge of this Bill. The principle which I maintain is most definite, namely, that of the registration of a lease which is not admitted, as may be seen from the first proviso in this amendment, which runs thus:—

'Nothing in clause (*a*) shall prevent the landlord from recovering rent at the rate actually paid for a continuous period of three years immediately preceding the year for which the rent is claimed.'

"The less determinate element is accepted, and the more determinate element is rejected. With regard to the third proviso, which runs thus:—

'(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable',

I think the term 'specially low rate' is very indefinite, and will lead to litigation; so also is the expression 'in consideration of cultivating a particular crop for the convenience of the landlord'. While I was ready to accept the proposals placed before the Council and afterwards withdrawn by the Hon'ble Mr. Evans, I cannot say the same with regard to the new provisions. They are open to objections which I have above explained. By letting in oral evidence, we are upsetting one of the main principles of the Bill."

The Hon'ble Mr. REYNOLDS said:—"I do not wish to detain the Council after the long discussion which took place yesterday, but I regret that the hon'ble member in charge of the Bill has surrendered the principle that enhanced rent should only be enforced under a registered agreement. The importance of that principle is very great, and even under the circumstances which were so forcibly put before the Council by the Hon'ble Mr. Evans, I still think that the security of a registered agreement is so great that some inconvenience ought to have been risked in order to obtain it. The Behar Rent Committee decided that there should be no enhancement out of Court, except under the form of a registered agreement, and that was the opinion of practical men, both official and non-official. We know the procedure under which enhancements are obtained in that province, and that there are not many enhancement cases in Behar, because they are not wanted. The landlord simply gets the patwárí to put down the enhanced rent in the jamábandi and he sues on the jamábandi. There is evidence before the Council to show that that is the common way in which it is done. It is true that under this section enhancement cannot take place till after three years, but even with that limit there is great danger in allowing this if we have not the security of a registered instrument. I referred to the precedent of the North-Western Provinces Rent Act, and I was told that the cases were not parallel, because in the North-Western Provinces the agreement may be registered before a kanungo, and we have not that facility in Bengal. I do not admit that does away entirely with the parallel. We have quite as many registering officers in Bengal as there are

kanungos in the North-Western Provinces, but I admit that we have not got these village officers at present, and the people are not accustomed to the registration system. But this objection will no longer apply when we have, as I hope before long we shall have, a survey and record-of-rights, and the means of maintaining it in Behar. I trust the hon'ble member in charge of the Bill will not object to put in words in the section which will exclude from the objection of that clause any local area in which arrangements have been completed for a survey and record-of-rights. There will then be no excuse that there is no village-officer before whom the registration can be made. If the hon'ble member will agree to that clause it will remove a good deal of the objection I feel to this proposal. In regard to clause (iii), as to specially low rates of rent in consideration of cultivating particular crops, I should have been better satisfied if it were confined to contracts already existing. I cannot see the necessity for future contracts under this special provision. In future it will be in the power of the landlord to make an agreement at a higher rate, with a condition that the tenant shall hold at a lower rate as long as he grows certain crops. The provision as it stands is calculated to lead to a good deal of litigation owing to its indefiniteness."

The Hon'ble MR. HUNTER said:—"My Lord, this amendment has been attacked both as to the form and as to its principle. The form of the amendment may, I think, be safely left to the hon'ble member in charge of the Bill and to the hon'ble the Law Member. But with regard to the principle embodied in the amendment, I feel bound to say that it seems to me to be both fair and wise. Hon'ble members of the Select Committee will be aware that I agreed to the section as it stands in the Bill with great reluctance, and I felt that reluctance afresh as I listened to the speech of the Hon'ble Mr. Evans yesterday. No one could have followed that speech without perceiving that the Bill as it stands attempts to legislate in the teeth of the established custom in Bengal. I therefore accept my Hon'ble freind's amendment as the best compromise which has been presented to us. It embodies a principle which the majority of the Select Committee desire to retain, and at the same time it removes certain defects from the section as it now stands in the Bill."

The Hon'ble MR. AMÍR ALÍ said:—"I am very loth to trespass on the time of the Council, but as I spoke against the amendment as it was proposed by the Hon'ble Mr. Evans I wish to say a few words on its present form. I desire to endorse what fell from the Hon'ble Rao Saheb Mandlik. We have introduced a most indeterminate element where there was something determinate before. We have by proviso (i) done away entirely with the beneficial effect of the preceding clause; and with reference to clauses (ii) and (iii) I am bound to say that they appear to me so complicated, involving so many difficult considerations, that the judicial officers trying cases under these clauses may well be required to pass an examination before they are entrusted with the adjudication of those questions."

The Hon'ble MR. GIBBON said:—"I beg to record my approval of the amendment in preference to what is in the Bill. But I regret the Council did not see their way to accept the proposal of the Behar Committee, which met with the approval of the Hon'ble Mr. Reynolds. That proposal was that it should be left to landlord and tenant to come to a mutual understanding provided such agreements are in writing and registered, without determinitn by law the terms and conditions of the agreement."

His Honour THE LIEUTENANT-GOVERNOR said:—"I accept the compromise as a solution of the difficulty."

The Hon'ble SIR STEUART BAYLEY said:—"I think I should offer some reply to the objections which have been made. I did not altogether follow some of the severe criticisms of the Hon'ble Rao Saheb Mandlik. In regard to the first point, the vague and indeterminate drafting of the third clause, I am in the hands of the Council. I can only say that it has satisfied the Hon'ble Mr. Evans

and the Hon'ble the Law Member of the Government. I think I may place their approval against the criticism of the hon'ble member, and I think the Council may safely trust to their guidance as far as the matter of drafting is concerned.

"Then we come to the criticism of the principle involved in the amendment. The Hon'ble Mr. Reynolds objects that I have surrendered the valuable principle of enhancement by registered contract, and especially in regard to Behar. I think I value the principle of registered contracts as much as anybody can. I have always said that I look on this as a most important section of the Bill, not only from the good effect of registration in reducing and simplifying legislation, but also from its indirect educational effect on the raiyat's knowledge of his rights; but I yielded to the strong case made out by the Hon'ble Mr. Evans showing how great a change the law involves in the actual facts of everyday life, and what inextricable confusion may take place unless we take these facts into consideration, and I waited with great anxiety and earnestness to hear what reply would be made to him. I can only ask the Council whether my critics gave or attempted to give anything like a sufficient answer to these arguments, and whether it is not my duty to accept a compromise which gives distinct and definite point to our wish and anxiety that contracts should be registered in every case possible, but at the same time does not enable the raiyat to repudiate an agreement which he had carried out for 10 or 15 years, because at some long antecedent period the rent was low and no subsequent contract could be produced. Defence of such a position was absolutely impossible, and I do not think the Council will be wrong in accepting this compromise. Then I come to the suggestion which the Hon'ble Mr. Reynolds made with regard to the example of the North-Western Provinces Rent Act. He said rightly that the parallel was not exact. Granted that we have a number of registering officers equal in number to the kanungos of the North-Western Provinces, yet the actual difficulty was not in the number of officers but with regard to a record-of-rights being prepared and maintained. In the North-Western Provinces you have such a record, in Bengal you have not, nor have you a registration of rents or the machinery to maintain it. The hon'ble gentleman asked whether I could not see my way to provide that, when Chapter X of the Bill comes into force in any place, this proviso should cease to have effect; that is, that we should insist on the contract being registered before a Revenue-officer. Chapter X refers to the preparation of a record-of-rights; it does not provide either for the maintenance of that record, or for the correction of it or for the control of the officers who have to keep it up. Consequently, Chapter X alone will not give the facility or the security which the North-Western Provinces system now gives. These matters are, however, within the competence of the Lieutenant-Governor's Council to legislate for, and I will point out that the last section of the Act gives the Lieutenant-Governor power to legislate for the amendment of the Act; and should the time ever come when the system in Bengal is in this respect on all fours with the North-Western Provinces, then it will be quite in the power of the Lieutenant-Governor to assimilate the system in Bengal to the system in the North-Western Provinces, because then the two systems would be on entirely the same basis."

The amendment was put and agreed to.

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI moved, on his own part and on behalf of the Hon'ble the Mahárájá of Durbhunga, that section 48 be omitted. He said:—"The institution of payment in kind is one of the oldest institutions in the country. It has always worked very satisfactorily. It is free from those sources of dispute and litgation which are inseparable from money-rents. It involves no suits for enhancement or abatement of rent. The benefits of a rise in the price of produce are shared both by the landholder and his tenant without the interference of Courts. The tenants are not driven into debt, and if they have to borrow they borrow from their landlord, whom experience has shown to be a much less exacting creditor than the village-usurer. The landholder participates in the profits and losses of the cultivation, and in districts like Patna and Gya, where the *bhaoli* system obtains, the landholder

co-operates with his tenants in the cultivation. It is the landholder who clears the water-channels and maintains the embankments. If the works were left to individual raiyats, they would be wholly unable to maintain the works with the limited means at their disposal, and cultivation would come to a deadlock. It would be therefore very inexpedient to give either of the parties the right to make capricious claims for the conversion of produce-rents into money-rents, and I think it would be in the interests of both landholders and raiyats if this section were omitted."

The Hon'ble MR. QUINTON said:—"My hon'ble friend started by saying that payment of rent in kind was for the mutual advantage of the raiyat and the landlord. He thought the parties themselves were the best judges of their own advantage; and if they find it is for their mutual advantage, neither party will apply for commutation. I would point out that the rule we propose to apply is in force in the North-Western Provinces and the Central Provinces, in which large tracts are under the system of cultivation known as *bhaoli* tenures. I do not propose to detain the Council by a discussion on the advantages or disadvantages of the *bhaoli* system: on the one hand, it benefits the landlord in seasons of prosperity, on the other, it protects the raiyat from calamities of season. But we think the principle is a sound one that either party to whom it is an advantage should have the option of applying for a commutation of rent. On these grounds I oppose the amendment."

The Hon'ble SIR STEUART BAYLEY said:—"I cannot altogether agree that the doctrine which the hon'ble mover of the amendment has laid down, to the effect that the payment of rent in kind is free from dispute or litigation, is the correct doctrine on the subject, because I have spent a great part of my life in districts where such holdings are common, and my experience is directly to the contrary. I am not one of those who look on payment of rent in kind as in itself an evil which ought to be got rid of. That opinion is very commonly held, and at one time it was held strongly by the Board of Revenue, and it was then their policy to discourage it in every way. This perhaps accounts for the absence of all provisions for dealing with it from Act X of 1859. I have myself seen the great advantage of it. The system is one under which in a bad season the landlord shares the risk, and the raiyat never has to pay more than a certain share of what he reaps; it enables him to tide over a very bad year without being utterly broken down, as he would be if he had to pay a money-rent. In South Behar, where the system most prevails, the country depends very much on the rainfall; water is collected in reservoirs, which are prepared partly by the raiyats and partly at the expense of the landlord; that is, the raiyats supply ordinary labour and the landlord supplies skilled labour besides giving the raiyats a meal during the time they are at work; and this reservoir supplies the smaller channels, the whole cultivation depending upon it. I should be sorry to see a sudden stoppage put to that system. But there is no question that cultivation under the *bhaoli* system is careless and unprogressive; the raiyat knows that the full advantage of whatever better cultivation he may make will not go to himself. I think the hon'ble member's objection would have had great force if the Bill provided, as the original Bill did, that the raiyat or the landlord might demand absolutely and in every case to have a commutation in money; but we have now simply given the right to apply for commutation, and have also given the Revenue-officer a discretion to refuse. It is not possible to lay down definite rules to guide the Revenue-officers whether the application should be granted or not. The circumstances are so diverse that it will be impossible to do it. Speaking for myself, I could easily decide in some cases whether it would be good or bad. Unquestionably where the interests of a great number of raiyats are concerned, where one reservoir supplies a number of homogeneous holdings with water, it will be entirely wrong to grant the application of an individual raiyat; but where we have to deal only with the holding of an individual raiyat, where this does not depend on one general system of irrigation, I do not see why he should not be allowed to commute. Again in regard to the landlord, the *bhaoli* system is a good one for a small landholder, who can look after the proceeding himself,

but for a large landholder, who has to trust to agents, it is a bad one. It allows an enormous amount of simple cheating by the landlord's agents and against the landlord's agents by the raiyats. We must leave it in each individual case to the Revenue-officer, who goes to the spot to decide. I am told that no hardship or injury to the raiyats under this system is made out. This I must absolutely contradict. I would refer you to the opinion of the Commissioner of Patna who succeeded me. He defends the system on the whole on the same grounds as I do, but says it leaves the raiyat at the mercy of the landlord's agents.

"Similar but much stronger remarks are made by the experienced Deputy Collector whose words are quoted by the Behar Rent Committee, and are brought forward by them as the foundation of their recommendation. The proposal that commutation should be allowed was originally made by that Committee and adopted by the Rent Commission, and I find it in every subsequent proposal in regard to legislation for Behar."

The amendment was put and negatived.

The Hon'ble MR. AMÍR ALÍ by leave withdrew the amendment that in line 3 of section 48, for the word "exceeding" to the end of the section, the following be submitted:—

"exceeding one-fifth of the gross produce of the land in staple food crops, calculated at the price at which raiyats sell at harvest-time."

The Hon'ble BÁBÚ PEÁRI MOHAN MUKERJI, on behalf of the Hon'ble the Mahárájá of Durbhunga, by leave withdrew the following amendments:—

That in the event of his last preceding amendment not being carried, in clause (*a*) of section 48, line 2, for the word "registered" the word "written" be substituted.

That in clause (*a*) of section 48, line 3, for the word "fifty" the words "one hundred" be substituted.

That in clause (*b*) of section 48, for the word "twenty-five" the word "fifty" be substituted.

That in lines 4 to 7 of section 49, the words from "and after", &c., to the end of the section, be omitted.

That in the event of his last preceding amendment not being agreed to, in line 4 of section 49, the word "written" be omitted.

That in line 6 of section 49, for the word "six" the word "one" be substituted.

The Hon'ble MR. GIBBON moved that for section 49 the following be substituted:—

"An under-raiyat shall not be liable to be ejected by his landlord, except—

"(*a*) on the expiry of the term of a written lease;

"(*b*) when holding otherwise than under the terms of a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord."

He said:—"The subject of sub-letting by an occupancy-raiyat to another person was found to be a difficult one in Committee. I contended we should give the under-tenant as much protection as it is possible to give him; that it is necessary when sub-letting that the agreement should be by written lease, not necessarily a registered one; that when an occupancy-raiyat sub-lets his lands on a verbal agreement the sub-tenant should, in the case of his landlord wishing to eject him, be entitled to hold at a judicial rent for three or five years, or that the sub-tenant should receive the same protection as is to be provided for the non-occupancy-raiyat under the Bill. But the Committee did not

see their way to this; the only suggestion they adopted was that, when a sub-raiyat was let in on a registered lease, it should be for a term of years. I admit with reference to a sub-lessee that the Committee have given a sub-lessee on a registered lease every protection possible short of making him an occupancy-raiyat; he is to be let in for a term not exceeding nine years; the lease is also to be treated as an incumbrance on the holding. Under the present law sub-letting is not controlled and a sub-lessee receives no protection. If the tenant acts in collusion with the landlord, it is in the power of the occupancy-raiyat to dispute the sub-lease and avoid all liability; the occupancy-raiyat may surrender or abandon his holding, and the sub-lessee receives no protection. There are two kinds of sub-lessees; one is the capitalist, the other the poor raiyat; the capitalist has had every protection given him under the Bill, and the defects of the present law are as regards the capitalist sub-tenant to be remedied under the Bill; but the poor raiyat, who is let in on a verbal lease, except that he can only be ejected after six months' notice, receives no further protection. Section 48 provides that the landlord can only sue for a rent not exceeding 50 per cent. over his own rent if on a registered lease, and 25 per cent. if on a registered agreement; it is to this extent only that he gets protection. Occupancy-raiyats who sub-let on bhaoli agreements give no written leases and may eject their tenants at pleasure under the Bill; if they hold their lands at a money rental they might have to forfeit a portion of the outturn crop, but the hardship to the sub-tenant is the same. I propose that he shall only be liable to ejectment on the expiry of a written lease, or when holding on a verbal engagement, or on notice to quit served in the year previous to the one at the end of which he is to be ejected. This will in all instances insure him one year and a half's possession of the land. That is the least protection we can give him, for the poor raiyat is entirely dependent for his living on the property he holds, and we give him no protection except that of six months' notice; he should receive at least a year and a half's notice."

The Hon'ble MR. HUNTER supported the amendment:—He said:—"One of the acknowledged defects of the Bill as it stands is the scant protection which it gives to the under-tenant. The Select Committee clearly perceived this defect; but they did not so clearly see their way to remedy it. I regard my hon'ble friend's amendment as a fair and very moderate attempt to supply what I have always felt to be an omission in the Bill. Its effect will only be to render the eviction of an under-tenant a somewhat more difficult and tardy process. I would press on those who have not hitherto seen their way to agree with my hon'ble friend and with myself in this matter, that the under-tenant is the tenatn of the future throughout large areas of Bengal, that already his numbers have become a most serious problem, and that he is the only class of tenant for whom the Bill has failed to make any adequate provision."

The Hon'ble MR. AMÍR ALÍ also supported the amendment. He said:—"I think the reasons which have been advanced by the hon'ble mover of the amendment are very cogent, and it is unnecessary for me to add anything further."

The Hon'ble SIR STEUART BAYLEY said:—"I am very sorry I do not see my way to accept this proposal; the first part of the amendment, I think, unnecessary, as it is a part of the present law; if you hold under a lease you can only be ejected on the expiry of the lease. With regard to those who hold without written leases, the law provides for a notice of six months, and I do not think it is shown to be really necessary that we should give him 18 months' notice; on a notice of six months he should be able to move elsewhere and take up another holding."

The Hon'ble MR. GIBBON said in reply:—"With reference to a written lease, my reason is that that may be an inducement to holders to give written leases, so that they may at the end of the lease eject without notice, whereas without a lease they are bound to give notice. The giving of written leases should be encouraged as much as possible."

The amendment being put, the Council divided:—

Ayes.	*Noes.*
The Hon'ble G. H. P. Evans.	The Hon'ble J. W. Quinton.
The Hon'ble H. St.A. Goodrich.	The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. J. Reynolds.	The Hon'ble Rao Saheb Vishvanath Narayan Mandlik.
The Hon'ble W. W. Hunter.	The Hon'ble Sir A. Colvin.
The Hon'ble Amír Alí.	The Hon'ble Sir S. C. Bayley.
The Hon'ble R. Miller.	The Hon'ble C. P. Ilbert.
The Hon'ble T. C. Hope.	Lieutenant-General the Hon'ble T. F. Wilson.
His Excellency the Commander-in-Chief.	The Hon'ble J. Gibbs.
His Honour the Lieutenant-Governor of Bengal.	

So the amendment was agreed to.

The Council adjourned to Monday, the 9th March, 1885.

SIMLA;
The 28th April, 1885.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

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STAR OF INDIA.

NOTIFICATION.

Fort William, the 1st January, 1885.

No. 18.I.

His Excellency the Grand Master of the Most Exalted Order of the Star of India is pleased to announce that Her Majesty the Queen and Empress of India has been graciously pleased to make the following appointments to the aforesaid Order :—

To be a Knight Grand Commander.

His Highness Asaf Jah Muzaffar-ul-Mamalik Nizam-ul-Mulk Nizam-ud-Daulah Nawab Mir Mahbub Ali Khan Bahadur, Fath Jang, Nizam of Hyderabad.

To be Knights Commanders.

The Honorable Augustus Rivers Thompson, C.S.I., C.I.E., Bengal Civil Service, Lieutenant-Governor of Bengal.

Charles Grant, Esq., C.S.I., Bengal Civil Service, Secretary to the Government of India in the Foreign Department.

To be a Companion.

Henry William Primrose, Esq., lately Private Secretary to the Viceroy and Governor-General of India.

By Order of the Grand Master,

H. M. DURAND,

for Secretary to the Most Exalted Order of the Star of India.

INDIAN EMPIRE.

NOTIFICATION.

Fort William, the 1st January 1885.

No. 11.E.

Her Majesty the Queen and Empress of India has been pleased to appoint the undermentioned Gentlemen, who by their services have merited the Royal favor, to be Companions of the Order of the Indian Empire:—

Monsieur Puton, Director of the Forest School at Nancy, France.

Monsieur Boppe, Sub-Director of the Forest School at Nancy, France.

Major Lewis Conway-Gordon, Royal Engineers, Manager of the Eastern Bengal State Railway.

The Reverend Krishna Mohan Banarji, a Senior Fellow and Honorary Doctor of Law of the Calcutta University, and a Municipal Commissioner of the Town of Calcutta.

James MacNabb Campbell, Esq., M.A., Bombay Civil Service, Assistant Collector and Magistrate.

Rao Sahib Mahipatram Rupram Nilkanth, Principal of the Ahmadabad Training College.

Ralph Thomas Hodgkin Griffith, Esq., M.A., Director of Public Instruction, North-Western Provinces and Oudh.

Kunwar Harnam Singh, Ahluwalia, of the Kapurthala State.

Peter Mitchell, Esq., Personal Assistant to the Adjutant General in India.

Nawab Nawazish Ali Khan, Honorary Assistant Commissioner in the Punjab.

Risaldar-Major Isri Parsad, Pension Establishment, late First Regiment, Central India Horse.

Demetrius Panioty, Esq., Assistant Private Secretary to His Excellency the Viceroy and Governor-General of India.

By Order of the Grand Master,

H. M. DURAND,

for *Secretary to the Order of the Indian Empire.*

FOREIGN DEPARTMENT.

NOTIFICATIONS.

INTERNAL.

Fort William, the 1st January, 1885.

No. 11.

His Excellency the Viceroy and Governor-General is pleased to confer upon General Azim-ud-din Khan, of the Rampur State, the title of "Khan Bahadur," as a personal distinction.

No. 21.

His Excellency the Viceroy and Governor-General is pleased to confer upon Munshi Durga Prasad, Inspector of Schools, Rohilkhand Division, North-Western Provinces, the title of "Rai Bahadur," as a personal distinction.

H. M. DURAND,

Officiating Secretary to the Government of India.

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